Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

11 pp

QUESTION PRESENTED

The rule announced by this Court in *United States v. Throckmorton*, 98 US 61 (1878) has been applied in criminal cases as often as the occasion for its application has arisen and where the substantial federal constitutional claims by the owner, with title, against decades of unlawful and unconstitutional TRESPASSING and ENCROACHMENT(S) by both federal and state agency's, without the award of any legal or just compensation, in total disregard for a damage action (#163875 (1970)) against previous TRESPASSING and ENCROACHMENT(S), were given NOTICE TO QUIT three (3) times of a specific Parcel "A" that is not, has not been put to a public purpose, the question turns not on the sufficiency of the evidence but on whether this conviction of criminal trespass, criminal mischief and imprisonment by the trespassers against the owner rests upon any evidence or record before the court of competent jurisdiction – AT ALL. (See *Thompson v. City of Louisville*, 362 US 199 (1878).)

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I. PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF CONNECTICUT

Petitioner Augustus Simmons requests that this Court issue a Writ of Certiorari to review the decision of the Court of Appeals of the State of Connecticut, which became final on July 13, 2000 when the Connecticut Supreme Court denied review (Appendix A).

II. OPINIONS BELOW

Augustus Simmons, owner with title to three (3) separate and distinct parcels of real property ("A," "C," "D") both on and adjacent to Bradley Airport was found guilty of criminal mischief, first degree; criminal trespass in the third degree; tampering with airways; criminal trespass in the first degree; interfering with a police officer; criminal mischief in the second degree; (transcript of Enfield Superior Court on the 5th day of June 1998, pages 730-738 – certified) (Appendix B). The Court of Appeals of the State of Connecticut affirmed in a decision of May 10, 2000 that was certified the 12th day of June, 2000 (Appendix C).

III. JURISDICTION

The Connecticut Supreme Court's final decision was filed on July 13, 2000. This petition is timely filed. This Court has jurisdiction pursuant to 28 USC § 1257(a).

IV. STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The due process and equal protection provisions applicable to the states are contained in U.S. Const. Amend. XIV § 1 which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ART. I § 11 CONSTITUTION OF CONNECTICUT

The Constitution of Connecticut provides that – "No person shall be deprived of life, liberty, or property without due process of law.

AMENDMENT V, CONSTITUTION OF THE UNITED STATES

" . . . nor shall private property be taken for public use without just compensation."

CONNECTICUT GENERAL STATUTE § 8-129

AGENCY TO DETERMINE COMPENSATION AND FILE WITH SUPERIOR COURT AND TOWN CLERKS; NOTICE TO OWNERS AND INTERESTED PARTIES. POSSESSION OF LAND. CERTIFICATE OF TAKING.

The Redevelopment Agency shall determine the compensation to be paid to the persons entitled thereto for such real property and shall file a Statement of Compensation containing a description of the property to be taken and the names of all persons having a record interest therein and setting forth the amount of such compensation, and a deposit as provided in Section 8-130, with the Clerk of the Superior Court for the judicial district in which the property affected is located. Upon filing such Statement of Compensation and Deposit, the Redevelopment Agency shall forthwith cause to be recorded, in the office of the Town Clerk of each town in which the property is located, a copy of such Statement of Compensation, such recording to have the same effect as and to be treated the same as the recording of a lis pendens, and shall forthwith give notice, as hereinafter provided, to each person appearing of record as an owner of property affected thereby and to each person appearing of record as a holder of any mortgage, lien, assessment or other encumbrance on such property or interest therein (a) in the case of any such person found to be residing within the state, by causing a copy of such notice, with a copy of such Statement of Compensation to be served upon each person by a sheriff, his deputy or a constable or an indifferent person, in the manner set forth in Section 52-57 for the service of civil process and (b), in the case of any such person who is a nonresident of this state at the time of the filing of such Statement of Compensation and Deposit or of any person whose whereabouts or existence is unknown, by mailing to each such person a copy of such notice and of such Statement of Compensation, by registered or certified mail, directed to his last-known

address, and by publishing such notice and such Statement of Compensation at least twice in a newspaper published in the judicial district and having daily or weekly circulation in the town in which such property is located. Any such published notice shall state that it is notice to the widow or widower, heirs, representatives and creditors of the person holding such record interest, if such person is dead. If, after a reasonably diligent search, no last-known address can be found for any interested party, an affidavit stating such fact, and reciting the steps taken to locate such address, shall be filed with the Clerk of the Superior Court and accepted in lieu of mailing to the last-known address. Not less than twelve days nor more than ninety days after such notice and such Statement of Compensation have been so served or so mailed and first published, the Redevelopment Agency shall file with the Clerk of the Superior Court a Return of Notice setting forth the notice given and, upon receipt of such Return of Notice, such clerk shall, without any delay or continuance of any kind, issue a Certificate of Taking and the names of the owners and of all other persons having a record interest therein. The Redevelopment Agency shall cause such Certificate of Taking to be recorded in the office of the Town Clerk of each town in which such property is located. Upon the recording of such certificate, title to such property in fee simple shall vest in the municipality, and the right to just compensation shall vest in the persons entitled thereto. At any time after such Certificate of Taking has been so recorded, the Redevelopment Agency may repair, operate or insure such property and enter upon such property, and take whatever action is proposed with regard to such property

by the Project Area Redevelopment Plan. The notice referred to above shall state (a) that not less than twelve days nor more than ninety days after service or mailing and first publication thereof, the Redevelopment Agency shall file with the Clerk of the Superior Court of the judicial district in which such property is located, a return setting forth the notice given, (b) that upon receipt of such return such clerk shall issue a certificate for recording in the office of the Town Clerk of each town in which such property is located, (c) that upon the recording of such certificate, title to such property shall vest in the municipality, the right to just compensation shall vest in the persons entitled thereto and the Redevelopment Agency may repair, operate or insure such property and enter upon such property and take whatever action may be proposed with regard thereto by the Project Area Redevelopment Plan and (d) that such notice shall bind the widow or widower, heirs, representatives and creditors of each person named therein who then or thereafter may be dead. When any Redevelopment Agency acting in behalf of any municipality has acquired or rented real property by purchase, lease, exchange or gift in accordance with the provisions of this section, or in exercising its right of eminent domain has filed a Statement of Compensation and Deposit with the Clerk of the Superior Court and has caused a Certificate of Taking to be recorded in the office of the Town Clerk of each town in which such property is located as herein provided, any judge of such Court may, upon application and proof of such acquisition or rental or such filing and deposit and such recording, order such clerk to issue an execution commanding the sheriff of the county or his deputy to

put such municipality and the Redevelopment Agency, as its agent, into peaceable possession of the property so acquired, rented or condemned. The provisions of this section shall not be limited in any way by the provisions of Chapter 832.

CONNECTICUT GENERAL STATUTE § 48-17a

REIMBURSEMENT OF OWNER FOR COSTS, DISBURSEMENTS AND EXPENSES ON FAILURE OR ABANDONMENT OF CONDEMNATION PROCEEDING

The state Court having jurisdiction of a proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the Court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (1) the final judgment is that the state agency cannot acquire the real property by condemnation; or (2) the proceeding is abandoned by the state. (1971, P. A. 518, § 1, eff. June 23, 1971)

P.L. 91-646; 42 USC § 4655

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES 1N CERTAIN CASES

Notwithstanding any other law, the head of a federal agency shall not approve any program or project or any

grant to, or contract or agreement with, a state agency under which federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such state agency that –

(1) In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 4651 of this title and the provisions of Section 4652 of this title, and

(2) Property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of this title. (P.L. 91-646, Title III § 305, Jan. 2, 1971, 84 stat. 1906)

CONNECTICUT PRACTICE BOOK, SEC. 347

ACCEPTANCE OF OFFER

Within thirty days after being notified of the filing of such "Offer of Judgment," the defendant or his attorney may file with the Clerk of the Court a written "acceptance of Offer of Judgment" agreeing to a stipulation for judgment as contained in the plaintiff's "Offer of Judgment." Upon such filing, the Court shall render judgment forthwith on the stipulation. (1980)

CONNECTICUT PRACTICE BOOK, SEC. 348

OFFER NOT ACCEPTED

If such "Offer of Judgment" is not accepted within thirty days, such "Offer of Judgment" shall be considered

rejected and not subject to acceptance unless refiled. (1980)

V. STATEMENT OF THE CASE

This case is an AIRPORT-related case that transcends back to a 1955 Federal-Aid Grant Agreement between federal and state agencies wherein the state agency (Connecticut Dept. of Transportation) was obligated under the grant agreement to acquire "satisfactory property interests" as defined in 14 C.F.R. § 152.3 for what would ultimately become a navigational servitude imposed upon the owner by the federal agency (F.A.A.) with the invasion, appropriation, installation on the surface of the real property, sophisticated navigational instrumentation controlling ingress and egress of air traffic at Bradley Airport, Connecticut's premier airport in the summer of 1962.

Starting on February 28, 1962 with a tortious course of conduct, the state agency initiated the first condemnation that was negated by the courts as arbitrary, unconstitutional with procedural problems (153 Conn. 351 (1966)) and was remanded.

In January, 1968 the state instituted condemnation proceedings a second time under Conn. General Statute § 48-12, in lieu of C.G.S. § 15-79 and again the court ruled the proceeding "null and void". (160 Conn. 492 (1971))

During the 1969 session of the Connecticut Legislature a special act was passed by the general assembly

allowing Augustus Simmons to sue the state for DAMAGES over "loss of use of land" arising out of the bumbling condemnation proceedings. On January 5, 1970 Plaintiff /Owner Simmons brought such a suit *Simmons v. Wetherall,* Docket #163875 which had several hearing dates scheduled that were all aborted. To date, damages have not been addressed and the action is still pending.

During the summer of 1974 the federal agency, F.A.A., without having paid any compensation, intended to upgrade the navigational servitude with the addition of a "middle marker" on private property and in lieu of negotiating a lease with the owner, enters into a lease with the sponsor of the airport, notwithstanding they had full knowledge that title reverted back to the owner on the land records on March 24, 1972 after the second condemnation was ruled null and void.

In December, 1977, plaintiff retained the firm of Rogin-Hirtle, Esq.'s to represent him upon scheduled days for hearings in damages before referee Shapiro and the very first act of private counsel was an attempt to give the state (and the F.A.A.) "complete insulation from and absolution from all of its sins" by invalidating the hearings in damages and for which a dismissal, discharge, in writing, was hand delivered on December 23, 1977. The discharge of 12/23/1977 was not sufficient to curb the tortious course of conduct.

Where the matter of subject matter jurisdiction and of indispensable parties was ARGUED before the court of competent jurisdiction, Hon. Dupont, A., on June 7, 1982 and the STATE vigorously and vehemently challenged the superior court with lack of subject matter jurisdiction and

the court, so recognizing, denied compensation from the slush fund to indispensable parties (VALENTE-ALLAIRE), yet, did not, would not set aside the void decree due to a supreme court ruling under *Simmons v. Wetherall*, 180 Conn. 587 (1980).

Where the "Slush Fund" monies were allowed to remain before the court from 1978 to 1991 before returning said monies to the state treasury, signifies FEDERAL QUESTION VIOLATIONS of the most severe nature, extending indefinitely the original unlawful, unconstitutional entry by the F.A.A. and the State of Connecticut.

VI. SUMMARY OF REASONS FOR GRANTING THE WRIT

A. This Court has ruled concerning the acts or omissions of any one, or of any group of persons, for no matter from what source, whether it be official or otherwise, an act or omission emanates, if it operates to deprive the defendant of notice or of an opportunity to be heard, then there has been a denial of due process of law. Such is the effect of this Court's decision in *Moore v. Dempsey*, 261 US 86; *Lynch v. Household Fin. Corp.*, 405 US at 544.

This court has also ruled where an act or omission operates so as to deprive him of an opportunity to present such evidence as he has, that it can be said that due process of law has been denied. *Frank v. Mangrum*, 237 US 309; *Powell v. Alabama*, 278 US 45; *Moore v. Dempsey*, supra. Nor does it make a particle of difference from what source the act or omission complained of emanates, for it is not the act or omission itself but its effect upon the

hearing accorded by the Court to the defendant that results in, or does not result in, a denial of due process of law.

The federal question presented to this Court on the civil side, Docket #0072 (2000), is equally applicable to the criminal trial court that reads: "Did the Connecticut Supreme Court transgress the due process and equal protection clauses of the federal Constitution where: – without any notice or service of process; without any constitutional valuations or just compensation; without any pleadings, hearings, decisions, judgments or mesne process due to the lack of both jurisdiction of the subject matter and parties by the legally organized Court (Superior) below – the act of the state Supreme Court giving a statute (Special Act #170 (1969)) a new construction that denied rights under the Constitution when it transmogrified plaintiff's – unaddressed – private tort action (#163875) into a public real property "F-R-E-E-Z-I-N-G" for a federally installed, maintained, and occupied aircraft navigational instrumentation system of over thirty-six (36) years duration on plaintiffs Parcel "C" that appears on the face of the record.

In the case of Parcel "C" the United States (FAA) physically entered into possession and ousting the owner, relying on its agent, Connecticut Dept. of Transportation (sponsor) to acquire title and pay just compensation.

In the case of Parcel "A," after the two condemnations by the state were ruled NULL and VOID, Parcel "A" was, after the second condemnation, ABANDONED (1971).

No later than July 31, 1971 the government's selection and implementation of acquiring property is governed by the Uniform Relocation and Real Property Acquisition Act of 1970, 42 USC § 4601 et seq. That statute enjoins federal agencies, *inter alia*, to attempt to acquire property by negotiation rather than condemnation, and whenever possible not to take land by physical appropriation, §§ 4651(1)(4)(8). In addition the statute requires a court with jurisdiction over a condemnation action that is dismissed, or abandoned, or ruled null and void by the government to award the landowner an amount that will reimburse him for "his reasonable costs, disbursements, and expenses incurred in contesting the suit," § 4654(a).

Petitioner's private counsel (Rogin-Hirtle, esq's) were specifically retained for the action addressing this issue and hearing dates previously scheduled before the referee were "knocked out of the box," the first order of business was to INVALIDATE and not address this mandatory federal and state statute, and, not establish any kind of value whatsoever for the land previously seized and occupied by the government for its federal navigational instrumentation, the only weapon, the only recourse for petitioner was a dismissal, a discharge hand delivered on 12/23/77.

Any subsequent contracts, coercion, conspiracies, "selling-out" of the client; intentional and deliberate disregard for *Simmons v. Wetherall*, #163875; intentional and deliberate disregard for state statute 48-17 a, b, c; intentional and deliberate disregard of federal regulation § 4654(a), in concert with the previous discharge was of

such substantial unconstitutional conduct and fraud, illuminates why the offer was "VERBAL" and could not be submitted to the court of competent jurisdiction. Where, even after a second discharge on 4/12/78 the counsel attempted to coerce petitioner into providing deeds) and give title to the government – counsel was told to go pound sand – on the beach.

The power to act under Special Act #170 (*Simmons v. Wetherall* - #163875) by private counsel and referee Shapiro were limited to exercise jurisdiction only " 'under the precise circumstances and in the manner particularly prescribed by the enabling legislation.' *Heiser v. Morgan Guaranty Trust Co.*, 150 Conn. 563, 565, 192 A 2d 44 (1963)." *Castro v. Viera*, 207 Conn. at 427-28.

Where the unconstitutional acts and behavior continued, even after withdrawal from representation and suit against the owner by placing liens on the property on 6/2 and 6/5 of 1978, without any NOTICE, SERVICE, HEARINGS in violation of petitioner's basic, fundamental, Fourteenth Amendment constitutional rights to some form of hearing; before or after the encumbrance, intentionally, maliciously OMITTING the owner in the encumbrances on the land records, clearly shows the INTENT was to unconstitutionally tie up the property – without resolution – in retaliation for not giving away title to the property.

Were this the normal run-of-the-mill illegal and unconstitutional encumbrance, no great emphasis would be noted, however, where the mandatory obligation under Federal Grant Agreement #9-06-009-5708 was to acquire a "satisfactory title," free of liens and

encumbrances (14 CFR § 152.3) the fraud and unconstitutional conduct take on tremendous added significance.

Where petitioner's Parcel "C" has been put to a public purpose differs altogether from petitioner's Parcel "A," abandoned after the second condemnation, in that Parcel "C" was a taking that has occurred previously in actuality (1962) and the JUST COMPENSATION remains to be determined under some standard, either the current market value or the value as of date of first condemnation and interest until title is acquired.

This Court has observed and ruled that " 'the owner is protected by the rule that title does not pass until compensation has been ascertained and paid . . . ' " id., at 284-285 (quoting *Albert Hanson Lumber Co. v. United States*, 261 US 581, 587 (1923). Quoting from *Kirby Forest Industries v. United States*, 467 US at 15 (1984) – "until title passed to the United States, (or the state), petitioner was free to make whatever use it pleased of its property" (emphasis added).

Regards Parcel "A" petitioner intended to develop the land, has made commitments to develop all of Parcel "A," THREE (3) separate "Notices to Quit" were sent to the sponsor of the airport and associated agencies to remove – put the encroachment fence back on its own property where it was formerly located and/or as of a given date the illegal, unlawful, uncompensated fence – WILL BE REMOVED.

Having given three (3) notices to quit Ex. # D, the state and/or the federal agency were prompted to quit or

exercise its authority under state statute or federal regulation to file a declaration of taking and thereby peremptorily to appropriate the tract in order to protect it from alteration. It is part of the record that Parcel "A" is not necessary for a public purpose and notwithstanding the fence encroachment, was not, has not, been put to use for a public purpose.

VII. THE FEDERAL QUESTION IS

Can a trespasser charge the owner with criminal trespass – criminal mischief – tampering with an airport – and substantial imprisonment where the owner has an insurmountable liability of FIFTEEN (15) lien holders against the property.

B. In *Thompson v. City of Louisville*, 362 US 199 (1960) this Court ruled that the ultimate question presented is whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the due process clause of the Fourteenth Amendment.

Before putting on his defense against unlawful and unconstitutional encroachment, petitioner's counsel (Geoffrey Naab) moved for a dismissal of the charges against him on the ground that a judgment or conviction on *"NO RECORD"* before the court of competent jurisdiction would deprive him of liberty, property, and compensation without due process of law in that –

(1) As in *Thompson v. Louisville*, supra, the substantial federal constitutional claims by the owner of this question turns not on the sufficiency of the evidence but

on whether this conviction rests upon any evidence or record before the court of competent jurisdiction, AT ALL.

(2) That the motion by the owner, with citations, to the prosecuting attorney to "PACK HIS BAGS" prior to trial was a challenge to the authority, and jurisdiction to proceed against the owner. (Trans. p. 229) Ex. # E.

(3) That there was never any notice or service of process against the owner and/or several lien-holders, fifteen (15) to acquire the subject property.

(4) That there was, and still is, a tort action (*Simmons v. Wetherall* – #163875) since *1970* for previous intrusions, seizures, encroachments that was never addressed, totally disregarded, scheduled hearing dates invalidated and at page 353 of transcript Hon. Harrelson, Patricia asked the owner: Mr. Simmons, how much have you been paid for this property? Mr. Simmons: NOT – ONE – DOLLAR.

(5) That there is a thirty-five (35) year history of seizures and encroachments (several) – without compensation.

(6) That the "STATE" argued several years ago (1982) the trial court was without jurisdiction of the subject matter or of the parties regarding the intrusions, seizures, encroachments (Trans. p. 211, 212). SEE EX # *F* & *G*.

(7) That the most recent encroachment, is not, was not, has not been put to use for a "public purpose." Photographs in evidence.

(8) That the most recent encroachment of extending a fence on private property, (Parcel "A"), was made with

the knowledge of not one (1), not five (5), not ten (10), but fifteen (15) lien-holders against the property. (Trans. p. 358-362).

(9) That petitioner has been subject to continuing arbitrary, unlawful, unconstitutional arrests, and imprisonment with felony convictions without the state ever acquiring a legal interest for the several intrusions, seizures, encroachments; without ever having paid one (1) dollar of just compensation.

(10) There is currently an allied – civil – case before this court, Docket #0072 (2000) on the same subject matter, the ownership, the due process and equal protection clauses of the federal constitution.

C. A criminal conviction procured by state prosecuting authorities solely by the use of extra-judicial unconstitutional decrees of discharged private counsel for real property acquisition, without jurisdiction of the subject matter or parties, without notice or service of process, or authority, known by them to be fraudulent, known by them there is "NO RECORD" of such decree before the trial court or court of competent jurisdiction, and, knowingly used by them in order to procure the conviction, is without due process of law and in violation of the Fourteenth Amendment.

Where the acts or omissions of a prosecuting attorney "have the effect of withholding from a defendant, the notice which must be accorded him under the due process clause, or if they have the effect of preventing a defendant from presenting such evidence as he possesses in defense of the accusation against him, then such acts or

omissions of the prosecuting attorney may be regarded as *resulting* in a denial of due process of law. Ex. # H.

As cited in *Mooney v. Holohan*, 294 US at p. 112: "It is only where an act or omission operates so as to deprive a defendant of notice or so as to deprive him of an opportunity to present such evidence as he has, that it can be said that due process of law has been denied.

It is a requirement that cannot be deemed to be satisfied if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty, AND PROPERTY, through a deliberate deception of court and jury by the presentation of unconstitutional excerpts, and, of [extra judicial fraudulent actions] by discharged private counsel of defendant that was never made a matter of trial court record. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of prosecuting officers on behalf of the state, like that of administrative officers in the execution of its laws, may constitute state action within the purview of the Fourteenth Amendment. That amendment governs any action of a state "whether through its legislature, through its courts, or through its executive or administrative officers." *Carter v. Texas*, 177 US 442, 447; *Rogers v. Alabama*, 192 US 226, 231; *Chicago, Burlington & Quincy R. Co.*, 166 US 226, 233, 234.

The rule announced by this Court in *United States v. Throckmorton*, 98 US 61, has been applied in criminal cases as often as the occasion for its application has arisen.

Springstein v. Saunders, 182 Ia 658; *State v. Asbell*, 62 Kan. 209; *Beard v. State*, 99 S.W. 837; *State Ex Rel. Davis v. Superior Court*, 15 Wash. 339; *Howard v. State*, 58 Ark. 229.

The appellate court adopting the opinion of the criminal court below, concluded that the judgment could not be set aside, notwithstanding material evidence was concealed or suppressed; that the fraud in such a case was not such fraud as was "extrinsic to the record" and that it was only in cases of extrinsic fraud that the relief sought could be had.

Excerpts from transcript, pages 211, 212 [JURY OUT]

Court: But I have already told you we are not having a trial about the state acquiring the land. That's already a matter of record.

Defense Counsel Naab: But you told me that I can prove that the land is Mr. Simmons' or attempt to prove that. That's in the long run, what I am going to try to do.

Court: Uh-uh no. I didn't mean to say that. The land is not Mr. Simmons'. The land does not belong to Mr. Simmons.

Naab: Your Honor, I protest most vigorously to your saying the land is not Mr. Simmons'. THE ISSUE IN THIS CASE IS WHETHER IT IS THE STATE'S OR MR. SIMMONS'.

Court: No that's not the issue in this case. That's the problem, that is not the issue in this case.

Naab: Is the court taking judicial notice the land belongs to the state?

Court: At some point I am sure I will. It is a matter of record the property does not belong to Mr. Simmons.

Naab: Your Honor, the state itself through the Attorney General's office has admitted in court the state did not acquire the property. If Mr. Simmons' – that's an issue and I submit that if Your Honor precludes me from even raising that issue that a grave injustice will be done here.

Court: That may be marked as a full exhibit. Defendant's "E" in evidence.

Naab: Your Honor, may I have a standing objection to this procedure.

Court: Yes.

Court: I am changing my ruling. The objection was sustained. There is no foundation for that map.

Excerpts from transcript p. 229 [JURY OUT]

Naab: Your Honor, I submit that whether the state acquired the property from Mr. Simmons or not certainly is an issue: He certainly cannot be guilty of criminal trespass on his own land. So whether or not he is the owner of that property is an issue in this case.

Court: This jury is not going to be called upon to decide the issue of the propriety or impropriety of the acquisition of that property. That document has nothing to do with what the jury has to decide.

Naab: I submit, Your Honor, that it does and at least – at least, perhaps the court would permit me to, since the jury is out, to refer to those matters within the document which I think are particularly relevant.

Court: You asked the court to take judicial notice of –

Prosecuting Atty. Malone: We did that some time ago. I did during argument during Mr. Simmons' motion to – whatever it was – for me to PACK MY BAGS, I think. I gave the court the citations and I will ask the court at the proper time – we haven't even got to the point where it is necessary for you to take judicial notice of anything at this point. But I will ask the court, once again, to take judicial notice of cases I cited to the court on an earlier occasion.

Motion to "pack the bags." Ex. # E.

VIII. CONCLUSION

An error in not admitting plainly relevant evidence which possibly influenced the jury adversely to a litigant cannot under *Fahy v. Connecticut*, 375 US 85 (1963) be conceived of as harmless.

When the jury is instructed in an unconstitutional presumption, the conviction must be overturned. *Bollenbach v. United States*, 326 US 607, 614-615 (1946).

The Fourteenth Amendment guarantees individuals against invasions by the states of fundamental rights. *Palko v. Connecticut*, 302 US 319 (1937), and under more recent decisions of this Court some of the specifics of the Bill of Rights as well, *Chapman v. California*, 386 US at p. 47 (1967).

Was the refusal of the State Supreme Court to hear the case a reasonable one or was the harmless error rule applied arbitrarily to evade the underlying constitutional

mandate of fundamental fairness from infractions "of federally guaranteed rights."

RESPECTFULLY SUBMITTED this 9th day of October, 2000.

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

*Defendant's counsel at the trial level (Geoffrey Naab) is not eligible to argue before the United States Supreme Court.

APPENDIX

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EXHIBIT A

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-99-0381

State of Connecticut

v.

Augustus J. Simmons

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

(Filed Jul. 17, 2000)

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (58 Conn. App. 903 [AC 18814]), it is hereby ordered that said petition be, and the same is hereby denied.

Borden, J. did not participate in the consideration or decision of this petition for certification

BY THE COURT,

/s/ Cynthia M. Gwouk
ASSISTANT CLERK-APPELLATE

Dated: July 13, 2000
Notice sent: July 14, 2000
Clerk, Superior Court, Hartford at G.A. 13, CR97 104930
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
LaBelle, LaBelle, Naab & Horvath, P.C.
John A. East III, Assistant State's Attorney

Geoffrey Naab in support of petition; *John A. East III*, Assistant State's Attorney, in opposition.

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875S

AUGUSTUS J. SIMMONS

v.

HORACE B. WETHERALL ET AL. : MAY 31, 2000

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED.**

IT IS FURTHER ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM FILING PLEADINGS IN THIS COURT THAT ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,

/s/ Francis J. Drumund
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI, ASSISTANT ATTORNEY GENERAL
ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

EXHIBIT B

ENFIELD SUPERIOR COURT 6/5/98

* * *

[730] THE COURT: I received another note. It says, your Honor, we have reached a verdict on all counts.

THE SHERIFF: Juror No. 1, Juror No. 2, Juror No. 3, Juror No. 4, Juror No. 5, Juror No. 6.

THE COURT: Thank you. Parties stipulate to the presence of all jurors?

MR. MALONE: Yes, your Honor.

MR. NAAB: Yes, your Honor.

THE COURT: Madam Clerk.

THE CLERK: Ladies and gentlemen of the jury, as your names are called, please answer here and rise and remain standing.

Juror No. 1, June Sponzo; Juror No. 2, Roland Harris; Juror No. 3, Myriam Velezquez; Juror No. 4, Jose Ribeiro; Juror No. 5 Norman Noble; and Juror No. 6, Debra Vacante.

Ladies and gentlemen of the jury, on the State v. Augustus Simmons have you agreed upon a verdict?

THE FOREPERSON: Yes.

THE CLERK: Would the defendant, Augustus Simmons, please rise and face the jury. In file No. CR97-104930, on the first count, criminal mischief in the first degree, foreman, what is your verdict?

THE FOREPERSON: Guilty.

THE CLERK: On the second count, criminal trespass in the third degree, what is your verdict?

THE FOREPERSON: Guilty.

[731] THE CLERK: On the third count, tampering with airways, what is your verdict?

THE FOREPERSON: Guilty.

THE CLERK: In the Docket No. CR97-105048, on the first charge of tampering with airways, what is your verdict?

THE FOREPERSON: Guilty.

THE CLERK: On the second charge, criminal trespass in the first degree, what is your verdict?

THE FOREPERSON: Guilty.

THE CLERK: On the third charge, interfering with a police officer?

THE FOREPERSON: Guilty.

THE CLERK: The third Docket No. CR97-106221, on the first count, criminal mischief in the second degree?

MR. MALONE: Third degree. The lesser include – sorry.

THE CLERK: Your verdict?

THE FOREPERSON: Second degree?

THE CLERK: Uh-huh.

THE FOREPERSON: Not guilty.

THE CLERK: Then in the lesser included offense – what do you say in the lesser included offense of criminal mischief in the third degree?

THE FOREPERSON: Guilty.

THE CLERK: Tampering with airways on the second [732] count?

THE FOREPERSON: Guilty.

THE COURT: The verdict may be accepted and ordered recorded.

THE CLERK: You may be seated.

MR. NAAB: Your Honor, may the jury be polled?

THE COURT: Yes. Madam Clerk, please poll the jury.

THE CLERK: Juror No. 1, June Sponzo, please stand. In Docket No. CR97-104930, the charges – State against Augustus Simmons, in the first count, criminal mischief in the first degree, what is your verdict?

THE JUROR: Guilty.

THE CLERK: In the second count, criminal trespass in the third degree, what is your verdict?

THE JUROR: Guilty.

THE CLERK: And third count, tampering with airways, what is your verdict?

THE JUROR: Guilty.

THE CLERK: In CR97-015048, State against Augustus Simmons, tampering with airways, first count, what is your verdict?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass in the first degree, what is your verdict?

THE JUROR: Guilty.

[733] THE CLERK: Interfering with a police officer, the third count?

THE JUROR: Guilty.

THE CLERK: In Docket CR97-106221, in the first count, criminal mischief in the second degree?

THE JUROR: Guilty.

THE CLERK: No.

THE JUROR: I am sorry. That's not guilty.

MR. MALONE: Just do the lesser included.

THE CLERK: I will just do the lesser included charge, criminal mischief third degree?

THE FOREPERSON: Guilty.

THE CLERK: And tampering with airways, last count?

THE FOREPERSON: Guilty.

THE CLERK: Thank you. You may be seated.

Mr. Harris, in Docket No. CR97-104930, State against Augustus Simmons, the first count, criminal mischief in the first degree?

THE JUROR: Guilty.

THE CLERK: The second count, criminal trespass third degree?

THE JUROR: Guilty.

THE CLERK: The third count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: And Docket CR97-105048, the first [734] count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass in the first degree?

THE JUROR: Guilty.

THE CLERK: Third count, interfering with a police officer?

THE JUROR: Guilty.

THE CLERK: Docket CR97-106221 the lesser included charge, criminal mischief in the third degree?

THE JUROR: Guilty.

THE CLERK: And finally, second count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: You may be seated.

Third juror, Miriam Velezquez, in Docket CR97-104930, State v. Augustus Simmons, the first count, criminal mischief first degree?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass third degree?

THE JUROR: Guilty.

THE CLERK: The third count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: In Docket No. CR97-105048, first [735] count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass first degree?

THE JUROR: Guilty.

THE CLERK: Third count, interfering with a police officer?

THE JUROR: Guilty.

THE CLERK: Finally, Docket CR97-106221, on the lesser included charge of criminal mischief third degree?

THE JUROR: Guilty.

THE CLERK: On the second count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: You may be seated.

Third juror, Jose Ribeiro, Docket No. CR97-104930, first count, criminal mischief first degree?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass third degree?

THE JUROR: Guilty.

THE CLERK: Third count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Second file, State against Augustus Simmons, in CR97-105048, first count tampering with [736] airways?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass first degree?

THE JUROR: Guilty.

THE CLERK: The third count, interfering with a police officer?

THE JUROR: Guilty.

THE CLERK: On the final file, CR97-106221, on the lesser included charge, criminal mischief in the third degree?

THE JUROR: Guilty.

THE CLERK: On the second count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Norman Noble, Juror No. 5 in State v. Augustus Simmons, CR97-104930, first count, criminal mischief first degree?

THE JUROR: Guilty.

THE CLERK: On the second count, criminal trespass third degree?

THE JUROR: Guilty.

THE CLERK: On the third count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Second file, CR97-105048, first count, tampering with airways?

[737] THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass in the first degree?

THE JUROR: Guilty.

THE CLERK: Third count, interfering with a peace officer?

THE JUROR: Guilty.

THE CLERK: Final file, CR97-106221 in the lesser included charge, criminal mischief third degree?

THE JUROR: Guilty.

THE CLERK: Second count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: You may be seated.

Debra Vacante, Juror No. Number 6, State against Augustus Simmons, CR97-104930, first count, criminal mischief in the first degree?

THE JUROR: Guilty.

THE CLERK: Second count, criminal trespass third degree?

THE JUROR: Guilty.

THE CLERK: The third count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: Second file, CR97-105048, criminal tampering with airways?

THE JUROR: Guilty.

[738] THE CLERK: Second count, criminal trespass in the first degree?

THE JUROR: Guilty.

THE CLERK: Third count, interfering with a peace officer?

THE JUROR: Guilty.

THE CLERK: The third file, CR97-106221, on the lesser included charge, criminal mischief in the third degree?

THE JUROR: Guilty.

THE CLERK: Second count, tampering with airways?

THE JUROR: Guilty.

THE CLERK: The jury has been polled.

THE COURT: Thank you, Madam Clerk. Ladies and gentlemen of the jury, we thank you for your service in this case.

MR. MALONE: Could they be excused before discharged, your Honor, please?

THE COURT: I ask you be excused.

(Jury was excused:)

MR. MALONE: Can I confer with counsel for a minute?

THE COURT: Yes. (A discussion was held off the record.)

THE COURT: You want a recess?

MR. MALONE: Yes, short recess, please, your

* * *

EXHIBIT C

AC18814	:	APPELLATE COURT
STATE OF CONNECTICUT	:	STATE OF CONNECTICUT
VS.	:	
AUGUSTUS J. SIMMONS	:	AT HARTFORD
	:	MAY 10, 2000

BEFORE:

JUSTICE SIDNEY S. LANDAU

JUSTICE WILLIAM J. LAVERY

JUSTICE PETER T. ZARELLA

William H. Juall
Court Monitor

[2] MR. NAAB: Good morning, Your Honor. May it please the court, I'm Jeffrey Naab, I represent the defendant and apppellant, Augustus J. Simmons.

This is a little bit unusual case in the way it comes down and the appellant's claims. The appellant claims that he was wrongfully convicted because of misapplication of the law to the facts.

JUSTICE LAVERY: He admits to all the acts though, right?

MR. NAAB: Absolutely, Your Honor.

JUSTICE LAVERY: All right. All the acts were admitted?

MR. NAAB: No question about that. He admitted that right up front before the trial began, at the start of the trial and repeatedly during the trial.

This was a case which was a difficult one for the jury because he did admit that he did it. This was not a case where the jury had to figure out whether he did it or somebody else did it or whether it was done or not done. It was a case where under instructions from the court the jury had to figure out whether what he did constituted the crimes charged. We submit that what he did did not constitute the crimes charged.

I'll start at the end with tampering with airports, airways, airport equipment and so on and [3] so forth, which was constantly described by the prosecution and by –

JUSTICE LAVERY: Isn't the fence a part of the security arena for the airport?

MR. NAAB: Yes, Your Honor. There's no question about it.

JUSTICE LAVERY: And he cut the fence.

MR. NAAB: He did cut the fence, but it wasn't the airport's fence, it was the National Guard's fence, it was the federal government's fence. That piece of property which Mr. Simmons claims he owns and which in equity he does own, in our view, was leased by the state to the federal government. That is, to –

JUSTICE LAVERY: The state owns the property.

MR. NAAB: The state owns the property, that's correct.

JUSTICE LAVERY: And they share the airport facilities with the Air National Guard?

MR. NAAB: They do.

JUSTICE LAVERY: And it's part of the security encirclement of the airport, is it not?

MR. NAAB: Yes it is, Your Honor.

JUSTICE LAVERY: All right.

MR. NAAB: That fence was not on the airport property, that fence was on the property which the Department of Transportation, that is the airport, [4] leased to the National Guard, that is, the federal government. The fence was erected by the federal government. The fence, when Mr. Simmons cut it down, was repaired and replaced by the federal government. It was patrolled by Air National Guard people, not by the state. The state patrolled their own fence but they didn't patrol that particular fence, the hundred and twenty-four feet that Mr. Simmons cut down, that was not, we submit, airport property. It did not fall within the definition or did not fall within the wording of the statute, which is – excuse me – any airport, heliport, landing field or airway or the equipment thereof. We submit that it was not the airport, not the airway, not the equipment of the airport but the equipment of the National Guard. And therefore he should not have been convicted on those counts.

With respect to criminal trespass and criminal mischief. Criminal trespass requires that the person who is trespassing, that is, is on the property which belongs to somebody else, is there when he knows that he is not licensed or privileged to be there.

JUSTICE LAVERY: Well, wasn't there a fence around the property?

MR. NAAB: There was a fence. Well he cut down the fence. That's the point, actually. He cut down [5] the fence. But it was his property. That's what was in his head. He knew, and indeed in colloquy just before sentencing Judge Harleston essentially agreed with me that Mr. Simmons knew that it was his property, that it was not the state's property, it was his property. It was his property because it had never, ever been taken from him properly with due process by the State of Connecticut or by the federal government. The federal government for years, for many years had used his property for airport purposes, the Federal Aviation Administration. The state had fenced off his property previously. In this case the National Guard in 1991 had fenced off his property, but it was his property –

JUSTICE LAVERY: Didn't Judge Shapiro order –

MR. NAAB: Yes, Your Honor?

JUSTICE LAVERY: Wait a minute. Didn't Judge Shapiro order that transferred to the state and it was affirmed by the Supreme Court of the State of Connecticut?

MR. NAAB: Yes he did, Your Honor, and that is correct.

JUSTICE LAVERY: Well, isn't that the law of the land? Of the state land anyway?

MR. NAAB: Well, to the extent that a ruling of the Supreme Court of the State of Connecticut speaks [6]

then of course it is the law of the State of Connecticut. But the distinction which Judge Harleston –

JUSTICE LAVERY: I mean, if I certified the title to that land I'm certify it was owned by the State of Connecticut, wouldn't I?

MR. NAAB: You would certify that record title is in the State of Connecticut, Your Honor. But I submit first that that title is subject to myriad clouds with all of the encumbrances on it. Encumbrances of record. Which are pre – many of which predate the date of those proceedings back in 1978.

And also I submit that equitable title is in Augustus J. Simmons, from whom the property was taken without due process. And without his consent. The stipulated judgment of 1970 – of January, 1978, was, as viewed by the state's own attorney two years later or four years later – two years after the Supreme Court's decision in a hearing before Judge Dupont, was viewed as nothing more than an executory contract for the sale of land, which Mr. Simmons –

JUSTICE LAVERY: That wasn't admitted – is that in evidence?

MR. NAAB: No, it is not in evidence because –

[7] JUSTICE LAVERY: Is that an evidenciary error you're appealing?

MR. NAAB: It is, Your Honor.

JUSTICE LAVERY: All right.

MR. NAAB: It's one of the specifications of error, both in the trial court and here is the failure or the

refusal of the trial court to permit testimony of what the assistant attorney general said in that hearing back in 1982.

JUSTICE LAVERY: Was that assistant attorney general subpoenaed?

MR. NAAB: No he was not, Your Honor.

JUSTICE LAVERY: So it was hearsay you were asking the court –

MR. NAAB: That's correct.

JUSTICE LAVERY: All right.

MR. NAAB: If the court please I'll simply state – and this is also in the brief – that I had intended to put in a certified copy of the transcript. I was unable to obtain a certified copy of the transcript of the proceedings because the court reporter's notes had been destroyed and he would not certify the xerox copy which I had. And therefore I proposed to put the evidence in by way of Mr. Simmons' testimony, because he was there and heard it all and he could use the transcript to refresh his recollection.

[8] Nevertheless, we do not view the action by Justice Shapiro and the action by the Supreme Court as saying anything more than that stipulated judgment should be enforced. It did not, should not have had the effect of transferring title to the state. But that's not the point, Your Honor. The point is not what actually happened, what the legal effect of the Supreme Court's action in 1980 was. The point is what was in Mr. Simmons' head. The criminal statute bars him from going on property or harming property in the case of criminal mischief, when

he does not believe that he has a right to do so. And he believed that he had a right to do so because it was on his property, that fence was a trespass on his land and he had a right to remove it.

JUSTICE LANDAU: Does that belief have to be reasonable or it doesn't have to be reasonable?

MR. NAAB: With respect to the criminal mischief statute, Your Honor –

JUSTICE LANDAU: Yes.

MR. NAAB: It has to be reasonable. With respect to the criminal trespass statute there is no requirement in the wording of the statute of reasonability.

JUSTICE LANDAU: So if I go into that other gentleman's house, and I just say that's my house, I [9] believe it to be my house, I cannot be convicted of criminal trespass?

MR. NAAB: No, Your Honor, not if you honestly believe it is yours. Now, if you destroy something in the house –

JUSTICE LANDAU: No, no, I'm not talking about that.

MR. NAAB: But for criminal trespass no, you can't, not if you honestly believe it's yours. I can see a number of ways that can happen. In the fifties, of course, we built the Levitowns where kids were constantly going home from school to the wrong house because they all looked the same. We don't have that problem so much anymore, but it does happen from time to time.

JUSTICE LANDAU: If I was to keep going back to the same house and the person kept saying look, Landau, it's not your house, and then he took me to court and the Supreme Court of the jurisdiction I was in said look, Landau, it's not your house. Now I keep going back.

MR. NAAB: I see. I submit, Your Honor, that the person might very well be liable in civil trespass but should not be liable, if he honestly believed. And that's what we're talking about here. If it's an honest belief. And that's why the [10] exclusion of evidence in this case is so important. Because –

JUSTICE LANDAU: Straighten me out on this.

MR. NAAB: I'm sorry.

JUSTICE LANDAU: So if the belief is honest but not reasonable it's still a – it's still – it still can't be convicted of criminal trespass?

MR. NAAB: He can't be convicted or should not be convicted of criminal trespass if it's an honest and even unreasonable belief, yes, Your Honor. Criminal mischief the belief has to be reasonable, and that's the way the statute is written, with a reasonable belief.

I submit, Your Honor, that the belief in his case is reasonable. It's got to be reasonable if it's based on the state's utter failure to follow all of the procedures that were supposed to be followed, the federal government's utter failure to follow all of the procedures that were supposed to be followed as set out in the uniform property acquisition act, the federal law. And in section 8-129 of the Connecticut General Statutes, which are in the appendix.

They didn't follow any of those procedures. Mr. Simmons was taken advantage of. And when he realized he'd been taken advantage of he said no, I'm not going to go through it, and he refused to [11] sign a deed. And he fired his attorneys and his attorneys nevertheless continued to purport to represent him for two months more, including right up to this so called supplemental judgment filed by Judge Shapiro in June of 1980.

Under those circumstances I submit it's not unreasonable for Mr. Simmons to believe that the property is rightfully his. And if he hears an assistant attorney general in a hearing regarding the same property and then the money involved in that property saying to a court, to the Superior Court, in this case Judge Dupont, that he believes that there was nothing but an executory contract for the sale of land and that no title could possibly vest in the state because no deed had been transferred – what's what Mr. Goldstein said and that's what we offered to prove, and Judge Harleston would not allow – it's certainly going to be reasonable for the – for the defendant in this case, a layperson, to believe that the property is his and the title has not in fact passed, even though the Supreme Court has said in effect that it did. And of course the Supreme Court didn't actually – I'm sorry – say that, what they simply said was that they affirmed the judgment. And then they ruled on two things, they ruled that section 13b-64 didn't apply to that particular [12] situation and they ruled that Mr. Simmons had been adequately represented by counsel before Judge Shapiro. That is all they ruled on in their per curiam opinion, nothing else.

Your Honor, if I may I'd like to reserve up to eight minutes. I don't know how much time I've got left because I wasn't watching my watch.

JUSTICE LAVERY: You have about six minutes.

MR. NAAB: Okay. I'd like to reserve the rest of it, Your Honor.

JUSTICE LAVERY: Okay.

MR. EAST: Good morning, Your Honor. May it please the court, my name is John East, I'm an assistant state's attorney with the appellate bureau of the Chief State's Attorney's Office, representing the appellee State of Connecticut in this appeal.

Your Honors, I'd like to open up by stating that although the factual history of this case, the underlying factual history is complex and even convoluted, the questions for this court here today are rather and simple and straightforward. Primarily, did the trial court abuse its discretion in its evidenciary rulings or did it mislead the jury in its instructions? I think that an objective examination of the record will show that the trial court acted properly in both instances.

[13] And I should – going right to the crux of the defendant's claim is that even if the trial court abused its discretion in its evidenciary claims, which the state wholeheartedly – the state said it did not, or mislead the jury in its instructions, the defendant still was able to testify forcefully and repeatedly at trial as to his belief that he either owned or was licensed or privileged to enter the property. His defense was not short cut or truncated at all by the rulings or the instructions the trial

court delivered. And on that point, unless this court has specific questions or inquiry on particular points the state is content to rely on its brief and urge an affirmance of this conviction. Thank you, Your Honors.

JUSTICE LAVERY: Okay.

MR. NAAB: May it please the court. Did the trial court mislead the jury in its instructions. I've briefed the issues but there's one that I haven't mentioned so far today and perhaps the court may have some question on it. And that is my exception to the court's defining license without defining privilege for the jury in connection with a criminal trespass statute.

Mr. Simmons never made a claim of license. That is, he never made a claim that the owner of the property had given him a special permission. He [14] claimed that he was privileged to be on the property because it was his property, and the definitions of the two words are really very, very different.

JUSTICE LANDAU: If I may interrupt you, counsel, I have somewhat of a problem. That was not, as I understand it, taken and discussed by the state. Now you're seeking to rebut an argument of the state?

MR. NAAB: He said that the issue was very simple, did Judge Harleston mislead the jury, that's what I'm addressing, Your Honor. I'll desist if you like.

JUSTICE LANDAU: No, I don't like anything. I mean, it's not what I like. You've convinced me.

MR. NAAB: I would – in that regard, Your Honors, I simply refer you, if I may, to a source which I did not cite in my brief, to with, Black's Law Dictionary,

the definitions of license, the real property law definition of license, which is pretty much what Judge Harleston told the jury and the definition of privilege. Which is a very different, very different definition.

Privilege: A particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantages of other citizens. The privilege of an owner to do what he or she wants with his property, in essence.

[15] With respect to Mr. Simmons' testimony being extensive and unfettered. His testimony was extensive but it was not unfettered by any means. Most of his testimony that was heard by the jury was on cross-examination by the state. Most of his direct testimony was in offers of proof outside the presence of the jury for Judge Harleston alone, and he was not permitted to testify to a great deal that he wanted to.

But more importantly, his testimony came in exceedingly disjointedly and broken up because of the way the trial went forward, with the objections by the state and Judge Harleston's rulings. He was not permitted to put in his story in a coherent, orderly manner so that the jury could understand the rationality of his sincere belief that that property was his. Thank you, Your Honor.

JUSTICE LAVERY: Thank you both.

HERE END THE PROCEEDINGS OF MAY 10, 2000.

[16] AC18814

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS

CERTIFICATION

I, William H. Juall, do hereby certify that the foregoing is a true and accurate transcription of the tape in the above-captioned matter, heard before the Appellate Court of the State of Connecticut on May 10, 2000, in Hartford, Connecticut.

Dated this day of June 12, 2000, in Hartford, Connecticut.

/s/ William H. Juall
William H. Juall
Court Monitor

EXHIBIT D

April 11, 1998

Robert Juliano, Director
Airports & Ports
Department of Transportation
State of Connecticut
2800 Berlin Turnpike
Newington, CT 06131-7546

Re: Security Fence
Bradley International Airport

Dear Robert,

The State of Connecticut, Department of Transportation (Airports and Ports), owners and operators of the airport of which you are currently director was notified by certified mail dated September 18, 1996 and again on May 19, 1997 that further encroachments upon claimant's land as a TRESPASSER on Parcel "A" as designated on a map that was submitted with the letter of September 18, 1996 was an act of spite, ill-will, fraud and malicious harassment, another police power action, not withstanding that the entry upon plaintiff's Parcel "C" wherein federal instrumentation is located is a continuing trespass, having appropriated the land for public purposes without ever acting under legislative authority or federal regulations and to make compensation therefor.

TRESPASSING

1. The letter to landowner from F.A.A., dated 26 May 1971 (Ex #1) acknowledges that the failure to obtain an adequate property interest over the several attempts of

the state to condemn the necessary land interests, *WITHOUT COMPENSATION*, was tantamount to an admission that not only was the state agency a TRESPASSER, but, the F.A.A. having already intruded upon the property, having made navigational installations of a permanent nature, *WITHOUT COMPENSATION*, was accomplished by virtue of a TRESPASS.

DELIBERATE MALEVOLENCE

2. The Rogin-Hirtle law firm having been retained specifically for hearings in damages, against the state, engages in a course of fraudulent conduct, in concert with and full knowledge of the Airports and Ports Division of the Connecticut Department of Transportation to nullify all liability for damages with the "combining of cases" on a sua-sponte basis on December 13, 1977 (date of appearance) in violation of practice book and court procedures, that included Docket #162923, an ejectment action that had gone to judgment after thirty (30) trial days, recorded with the Superior Court clerk on January 17, 1977, was made with the express fraudulent purpose of *DENYING, DEPRIVING* plaintiff of just compensation and concealment of fraud. The judgment (#162923) contained rental for Parcel "C" for the years 1964-1969, and, also *EXPOSED* the fact that leases by the state to the F.A.A, of the subject property (Parcel "C") should not be renewed. Such deprivations of just compensation, guaranteed by the fifth and fourteenth amendments was sufficient cause to hand deliver a written *DISCHARGE, TERMINATION, WALKING PAPERS*, to the Rogin-Hirtle law firm on December 23, 1977.

3. The imposition upon plaintiff by deceit, duress, fraud to sign a waiver not to pursue two (2) federal court actions, one of which, 472 F2d 509 was on remand from the second circuit on December 12, 1977, *BEFORE* an appearance was filed in state court on December 13, 1977 on the pretense that withdrawal had to be signed before an offer can be submitted was deliberate, corrupt, deceitful, pre-planned conduct to *DEPRIVE, DENY* plaintiff of just compensation, made with the tacit approval of the Airports and Ports Division of the Connecticut Department of Transportation and was further cause to immediately dispense with such unwanted and trammeled representation with a hand delivered discharge on December 23, 1977.

4. Where appraisals are mandatory under federal and state law to establish "fair-market value," are a prerequisite to any negotiations, the failure to address damages, mandated by federal law and state statute and Special Act #170 with the hearing dates previously scheduled were – "pigeon-holed," "squirreled-away" was even further cause to *REJECT* all offers with a *DISCHARGE, TERMINATION* on December 23, 1977. Where the state agency, in collusion and concert with the private law firm creates a "slush fund" that they fully understood was in violation of federal law and state statute, contributed to bargaining in bad faith, deprivation of constitutionally mandated compensation with a fund that the Attorney General's office (Feingold, V.) stated only "Jesus Christ" knew where or how the numbers came from.

5. The attempt to bargain, without a written statement of compensation, mandatory under federal and state law, where the Airports Division of the Connecticut

Department of Transportation gave ASSURANCES to the F.A.A. that federal and state laws would be complied with where federal funds and/or projects were involved proved conclusively that the course of conduct was so corrupt that it could not be put down on paper, rendering the proceeding a FRAUD with excessive coercion.

6. The return to the general fund by the F.A.A. of funds allocated under the grant-agreement (9-06-009-5708 (1955)) for the acquisition of "clear zones" on the subject property (Parcel "C") is admission of trespassing, a deprivation of just compensation as guaranteed by the fifth and fourteenth amendments and engaging in blatant fraud by entering into leases from the state, having full knowledge no proceedings were instituted, no compensation paid.

7. The return to the state treasury of the "slush-fund" by the Superior Court on December 23, 1991 for reasons that the court was without subject matter jurisdiction, none of the necessary parties having been served or given notice, constructive or implied, is proof positive that the Airports and Ports Division of the Connecticut Department of Transportation has been engaged in *CONTINUOUS TRESPASSING*. Where C.G.S. 48-21 mandates all lien-holders, must be paid first, before the owner, and the (twice) fired, discharged, terminated private counsel had NO AUTHORITY to proceed after discharge, after submitting a withdrawal from all Simmons matters on April 19, 1978, after sending a sheriff to attach plaintiff's property on the public land records for attorney fees on April 20, 1978, had NO AUTHORITY to submit monies to the court as withdrawn and discharged counsel.

NOTICE – SERVICE – "BLACK-EYE"

8. The "black-eye," for lack of a better term, applies to *Simmons v Wetherall,* 180 Conn. 587 for the reasons to wit:

A. From *Windsor v McVeigh,* 93 US 274 (1876) court said: "A proceeding" continued the court "professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court."

B. From *Case v Humhrey,* 6 Conn 130, 139 (1826) court said: "The deficiency of service in *Case v. Humphrey,* supra, arose from an inadequate affidavit relative to the deputation of an indifferent person who left purported process with the defendant. Since there was no actual service of process, the ensuing judgment was – extra judicial and void" 6 Conn AT 139. "Because of this no determination by the court of the respective rights of the parties was entitled to legal validity, regardless of when the defendant appeared to apprise the court of lack of jurisdiction. Where a writ is a nullity, so that judgment thereon would be incurably erroneous, it is *de facto* abated, and even the explicit admission of its validity by the party, never concludes the court."

C. It is a basic tenet of our judicial system that unless a duly authorized and directed officer makes service and return of a writ of summons (or attachment) and complaint there is no mesne process (citations omitted).

D. The Connecticut Supreme Court has consistently held that: "It is a principle of natural justice of universal obligation, that before the rights of an individual be bound by a judicial sentence he shall have notice . . . of the proceedings against him" *Parsons v Lyman*, 32 Conn 566, 576, quoting Mr. Chief Justice Marshall in the Mary, 13 US (9 Cranch) 126, 3 L.Ed 678. Fundamental tenets of due process, moreover, require that all persons directly concerned in the result of an adjudication be given reasonable notice and the opportunity to present their claims or defenses (citations omitted).

E. The Supreme Court of United States in *Shaffer v Heitner* 433 US 186, 97 S.Ct. 2569, 53 L.Ed 2d 683 (1977) enunciated both a new rule and its rationale – that new rule: "All assertions of state court jurisdiction must be evaluated according to the standards set forth in [*International Shoe Co. v Washington* 326 US 310, 66 S.CT 154, 90 L.Ed 95 (1945)] and its progeny. Those standards require certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Those standards apply to judgments in personam, and to judgments against a natural person, as well as to judgments against a corporation. The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the due process clause is the minimum – contacts standard elucidated in International Shoe (excerpted from 178 Conn 308 AT p. 318 (1979)).

FEDERAL PUBLIC LAW 91-646

9. It is abundantly clear the Connecticut Department of Transportation, your division, and your predecessors also appealed to the state legislature in 1971 for legislation (48-17 a, b, c,) (Ex #2), designed to comply with Title III of Federal Public Law 91-646 and where the division you represent, or its predecessors, *ABANDONED* proceedings against Parcel "A" after several years of tortious condemnation conduct, substantial costs, attorney fees, fraud, entering into leases of Parcel "C" to the F.A.A., after the condemned property reverted back to the owner (Vol. 52, p. 242-243, E.G.L.R.), without notice or compensation to the owner, in total disregard of federal law and the state legislation that you, your division, or your predecessors appealed to the legislature to enact, that was approved on June 23, 1971 and the federal law was mandatory on all states no later than July 1, 1972, plaintiff is entitled and required to recover his damages, past, present and future in one action (but not necessarily in one count). (Docket #163875)

POLICE POWER

10. The resort to police power, in lieu of proceeding under constitutional statutes has departed so far from the original intent of the obligations of the Airports Division to acquire "satisfactory property interests" as defined in 14 C.F.R. 152, 3 of federal regulations as to make a "sham" of the regulations promulgated by the United States Department of Transportation, mandated by the Uniform Real Property Acquisition Act – by attempting to *BACKDATE* a taking to November 12, 1964. It was

obvious FRAUD to try and relieve defendants from liability for the damages resulting to the plaintiffs from the prior and continuing trespassing.

11. The owner is being "polite" in serving notice after notice. The fence on Parcel "A" will be removed without further notice.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

Copies to:

David R. Hinson, Administrator
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, D.C. 20591

Robert S. Bartanowicz, Regional Director
12 New England Executive Park
Burlington, MA 01803

Vincent A. Scarano, Director of Airports, N.E.
12 New England Executive Park
Burlington, MA 01803

William Sullivan, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Alan N. Ponanski, Asst. Atty. Gen.
55 Elm St., Third Floor Annex
Hartford, CT 06106

Otto Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Chief Clerk, Superior Court
Michael DiDonato
(to be made part #163875 file)
85 Washington St.
Hartford, CT 06106

State Attorney's Office
State of Connecticut Court House
Enfield, CT 06082

Rogin, Nassau, Caplan, Lassman & Hirtle
1 CityPlace
Hartford, CT 06103

(Exhibit 1)

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

New England Region
154 Middlesex Street
Burlington, Mass. 01803
Tel. (617) 223-2271

[seal]

26 May 1971
Mr. Augustus J. Simmons
580 Park Avenue
Windsor, Connecticut 06095

Dear Mr. Simmons:

Your letter of 28 April 1971 has been referred to this office for reply to the question concerning the status of federal

funding insofar as it relates to Bradley Field, Windsor Locks, Connecticut. The State of Connecticut, under a Grant Agreement issued under Federal Aid Airport Program, Project No. 9-06-009-5708 has been obligated to acquire your property in addition to other properties under separate ownerships. The State has acquired all other properties but has, to date, not succeeded in obtaining adequate interest in your property due, of course, to the litigation arising over the several attempts of the State to condemn the necessary land interests.

This agency has not withheld funds from the State under the project. We have, in fact, participated to the fullest extent under our regulations in all other costs incurred except, of course, costs related to the acquisition of your property. We have administratively determined to reserve rights for the State of Connecticut to request federal participation in the costs of acquiring your land after it has been accomplished successfully.

While we understand your anxiety to retain possession of your land, the acquisition for the benefit of Bradley Field has been considered to be overriding. Consequently, our agency favorably reviewed the State's request for federal aid. The material submitted with your correspondence is returned herewith.

Sincerely,

/s/ [Illegible]
for J. B. Komich
Acting Chief, Airports Division, NE-600

Enclosures

Exhibit 2

TUESDAY MARCH 9, 1971

JUDICIARY COMMITTEE

For your information, H.B. #7038 – An Act Concerning Relocation Assistance was introduced by the Chairman of this Committee in order that the Transportation Department could comply with the provisions of public law 91-646. Mr. Knurek has also drafted a substitute for H.B. #7038 which will be presented at the Hearing on that Bill. He also has included here a statement which will be presented at the Hearing which I will leave for your information and we ask your support for substitute H.B. #7038 as being in compliance with Public Law 91-646 in order to obtain Federal Aid for highways.

Also comment on subsitute Bill #6892.

H.B. #6892 – AN ACT CONCERNING A UNIFORM REAL PROPERTY ACQUISITION POLICY.

H.B. #6892 was introduced at the request of the Department of Transportation as a hold bill designed to comply with Title III of the Federal Public Law 91-646 which establishes a uniform policy of real property acquisition practices. I have copies here for the committee of Title III of that Public Law which I will leave for the members of the Committee.

As written, Bill #6892 requires all governmental agencies, State and Town, to comply with Sections 303 and 304 of the Public Law mentioned and requires that said governmental agencies shall be guided by the real acquisition policies in Section 301 and the provisions of Section 302.

As far as the Department of Transportation is concerned, it is presently authorized to pay or reimburse property owners for the necessary expenses specified in these Sections except for the provision paying reasonable attorney, appraisal and engineering fees if the final judgment by a court is that the Department cannot acquire a particular piece of real property by condemnation or 2) the condemnation proceeding is abandoned by the Transportation Commissioner. The Transportation Department is guided by and complies with the land acquisition policies in Section 301 and Section 302 of said Federal Public Law 91-646.

I would like to submit a substitute Bill for 6892 which would authorize the Transportation Department to comply with the only provision of Title III of Public Law 91-646 which is not authorized by Statute to do at the present time. Thank you.

Rep. Carrozzella: Would you leave those statements with the girl so that she can use them in transcribing. Commissioner Carey – oh, you have already spoken. Attorney Carrigan.

Mr. Garrison: Mr. chairman, Members of the Committee my name is John Garrison. I am an attorney in Hartford but I am here today representing the New England Land Title Association. I am the Chairman of their Judiciary Committee and I am here speaking on behalf of the Executive Committee of the New England Land Title Association – for those who don't know what the Association is, it is an Association made up of the title companies doing business in the New England States and many of the attorneys who deal primarily with the conveyancing aspects of real Estate.

* * *

June 3, 1971

payment will, must be made so that the State Department of Transportation can comply with Section 304, Title 3 of the United States Code. And so, that the State Department will not lose Federal Funds for highways.

For those who may be interested, in inverse condemnation is where you have land locked piece of land, and you would have an opportunity to bring an action to force the state to bring condemnation proceedings.

THE CHAIR:

Question is on passage, will you remark further? If not all those in favor of passage signify by saying, "aye". Opposed, "nay". Bill is passed.

THE CLERK:

CAL. NO. 971. File No. 1360. Favorable report of the joint Committee on judiciary. *Substitute House Bill 7486.* An Act Concerning Retirement of a Judge of Probate.

SENATOR JACKSON:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill. This bill spells out the length of service required for retirement of Probate court Judges. I urge passage.

THE CHAIR:

Will you remark further? If not, all those in favor of passage signify by saying, "aye". Opposed, "nay". The ayes have it. *Bill is passed.*

THE CLERK:

CAL. NO. 972. File 1366. Favorable report of the joint committee on Appropriations. *Substitute Senate Bill 570.* An Act Concerning Provision for bus Transportation for children Attending Private Schools.

SENATOR HOULEY:

Mr. President, I move the acceptance of the joint committee's favorable

* * *

Substitute House Bill No. 6892
PUBLIC ACT NO. 518

AN ACT CONCERNING A UNIFORM REAL PROPERTY ACQUISITION POLICY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The state court having jurisdiction of a proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (1) the final judgment is that the state agency cannot acquire the real property by

condemnation; or (2) the proceeding is abandoned by the state.

Sec. 2. The state court rendering a judgment for the plaintiff in an inverse condemnation proceeding brought against the state by the owner of real property, or the attorney general effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the attorney general reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

Sec. 3. Any award made pursuant to section 1 or 2 of this act shall be paid by the head of the state agency for whose benefit the condemnation proceedings was instituted.

Sec. 4. This act shall take effect from its passage.

Approved June 23, 1971

EXHIBIT E

No. CR97-106221
No. CR97-0104930
No. CR97-0105048

SUPERIOR COURT

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS
Attn.: Chief Clerk

JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN AT ENFIELD

MAY 8, 1998

MOTION TO DISQUALIFY, DISMISS, "PACK THE BAGS" OF THE STATE ATTORNEY'S OFFICE WHO ARE – OR REPRESENT – THE WORLD RECORD TRESPASSERS OF THIRTY-FIVE (35) YEARS – AND COUNTING, FROM EXECUTING VOID WARRANTS UPON ADDITIONAL TRESPASSING.

It follows that where the court has no jurisdiction of the real property, or the person(s), trespass will lie against the officer for a seizure of the owner under the pretense of a purported judgment that is not voidable, not void, but *NON-EXISTENT* on the court records.

The court and the officer are all trespassers. *Wise v Withers*, 7 U.S. 331, 2 L.Ed 457.

RECORD

1. A quarter of a century ago, the courts, federal and state, the Connecticut legislature, the land records clearly established trespassing (failure to pay compensation) had transpired the previous ten (10) years.

The Second Circuit Court of Appeals (federal) 472 F2d 509 (1973).

The Connecticut Supreme Court (state) 160 Conn. 492 (1971).

The Connecticut legislature enactment of Special Act # 170 (1969).

The public land records of the town of East Granby, CT wherein all previously condemned real property revert and pass to and vest in plaintiff at Vol. 52, page 242-243 (March 24, 1972) (Defendant Ex. #1).

2. The actor's failure to remove from land in the possession of another a structure, chattel, or other thing which he has tortiously erected or placed on the land constitutes a continuing trespass for the entire time during which the thing is wrongfully on the land and confers on the possessor of the land an option to maintain a succession of actions based on the theory of continuing trespass or to treat the continuance of the thing on the land as an AGGRAVATION of the ORIGINAL TRESPASS.

3. The AGGRAVATION of the original trespass is illuminated by the twice (2) discharged private counsel (Rogin-Hirtle), acting as judicial officers, UNSUCCESSFUL exploit to acquire title to the property, with a court reporter making a record of proceedings (Defendant Ex. #2).

4. The AGGRAVATION of the original trespass is extended with the submission of a WITHDRAWAL to the owner on April 19, 1978 (Defendant Ex. #3).

5. The AGGRAVATION of the original trespass is further extended with the private counsel sending sheriff

after owner for counsel fees, recording same on East Granby, CT public land records at Vol. 59, page 419 (Defendant Ex. #4).

NO MESNE PROCESS – NON-EXISTENT JUDGMENT

6. The AGGRAVATION of the original trespass is manifest from the submission by the (honest) Chief Clerk of the Superior Court in Hartford in August, 1979 of the citation *Shelton v Wolthausen*, 80 c 599 to the Hon. John Daly making evident there were *NO* purported judgments or proceedings, of any nature, before the court. (Defendant Ex. #5 & #5a). Linda (Cohen) was first assistant in 1979 to Chief Clerk Lucian (Jachomovitz). As the "undated" note indicates, *NO* monies was paid to "Rogin-Hirtle-Salzman" esquires. This notice preceded *Simmons v Wetherall*, 180 Conn. 587 (1980).

7. The Superior Court record shows Hon. Judge Arnold Aronson returning the funds before the court back to the state treasury on December 23, 1991 for reasons the court lacked subject matter jurisdiction and no notice or service was ever made on the SEVERAL necessary parties.

NO NOTICE – NO SERVICE

8. The AGGRAVATION of the original trespass is manifest from a letter to Jason Pearl, Esq. (representing Rogin-Hirtle-Salzman) from referee Shapiro, dated July 18, 1980, calling attention to the fact "SEVERAL" encumberances are on the land records prior to the date of the Salzman attachment, acknowledging the fact the Superior

Court had no proceedings before it, acknowledging that notice to the various creditors may be (IS) necessary. This letter was post *Simmons v Wetherall*, 180 Conn. 587. (Defendant Ex. #6)

LAND RECORDS – EAST GRANBY, CT 1996

9. The AGGRAVATION of the original trespass is manifest from the recording on the public land records that *NO* compensation has been paid to one of several lien-holders (Thomas P. Byrne, Esq.) whose lien dates back to 1974, a full quarter of a century, and evidenced at Vol. 112, page 001-008 (Defendant Ex. #7). Connecticut eminent domain statute C.G.S. § 48-21 mandates all lien holders must be paid first, *BEFORE* the owner.

COMPENSATION

10. Failure to pay compensation is *TRESPASSING*. "Adequate provision for obtaining compensation" must exist prior to any seizure, condemnation, physical intrusion, constitutional deprivation, *Cherokee Nation v Southern Kansas* Ry., 135 U.S. 641, 659, 10 S. Ct. 965, 34 L.Ed. 295 (1890); see *Bragg v Weaver*, 251 U.S. 57, 62, 40 S. Ct. 62, 64 L.Ed. 135 (1919); *Pumpelly v Green Bay Co.*, 80 U. S. (13 Wall) 166, 175, 20 L.Ed. 557 (1871).

11. Damages, a vested property right (see *Ettor v Tacoma*, 228 U.S. 148), having accrued over the past thirty-five years, and CONTINUING, were cast in complaint in tort (Docket #163875), on file with the Superior Court in Hartford, cannot be destroyed or ignored by the state attorney's office, or any other judicial officer, without a

violation of rights guaranteed by the Fourteenth Amendment.

CONCLUSION

12. The allegations and exhibits do set forth an undeniable, unquestionable, TRESPASS.

NOTICE

13. On April 11, 1998 correspondence was addressed to Robert Juliano, Director, Airports and Ports concerning this trespassing with copies to several necessary parties and *ERROR* was made at the very top of the page with a date of April 11, 1997. Copies of this motion are being sent to the same parties requesting a *CORRECTION* of the date to *April 11, 1998.*

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

Copies to:

David R. Hinson, Administrator
Federal Aviation Administration
800 Independence Ave. S.W.
Washington, D.C. 20591

Robert S. Bartanowicz, Regional Director
12 New England Executive Park
Burlington, MA 01803

Vincent A. Scarano, Director of Airports, N.E.
12 New England Executive Park
Burlington, MA 01803

William Sullivan, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Alan N. Ponanski, Asst. Atty. Gen.
55 Elm St., Third Floor Annex
Hartford, CT 06106

Otto Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Chief Clerk, Superior Court
Michael DiDonato
(to be made part #163875 file)
85 Washington St.
Hartford, CT 06106

State Attorney's Office
State of Connecticut Court House
Enfield, CT 06082

Rogin, Nassau, Caplan, Lassman & Hirtle
1 CityPlace
Hartford, CT 06103

Exhibit 1

VOL 52 – PAGE 242

STATE OF CONNECTICUT

No. 156899

AUGUSTUS J. SIMMONS, OF WINDSOR	:	SUPERIOR COURT
VS.	:	COUNTY OF HARTFORD
AUGUSTUS J. SIMMONS, OF WINDSOR	:	
VS.	:	APRIL 16, 1971
FRANK C. PARIZEK, OF WILLINGTON; and EDWARD J. COADY, OF WEST HARTFORD; and KINGSLEY GILLESPIE, OF STAMFORD; and HUGH C. CURRAN, OF BRIDGEPORT; and ARTHUR S. SACHS, OF ORANGE; and E. DONALD WALSH, OF WATERTOWN, all duly appointed members of the Aeronautics Commission of the State of Connecticut	:	

JUDGMENT

PRESENT HON. JOHN CLARK FITZGERALD, JUDGE:

This action, by Writ and Complaint, dated July 15, 1968, as amended December 11, 1968 and December 20,

1968, and by a Substituted Complaint, dated June 4, 1969, claiming a temporary and permanent injunction and other relief, as on file, came to this Court on the first Tuesday of August, 1968, when the parties appeared, and thence to September 18, 1969 when the plaintiff filed his Reply to the defendants' Answer and Special Defense, and the parties were at issue as on file.

Said cause thence came to the present time when the Court entered Judgment in accordance with paragraphs 2 and 5 of the plaintiff's Substituted Complaint.

Whereupon, it is adjudged that the Certificate of Taking filed in the Land Records of the Town of East Granby in Volume 46, Page 113, is null and void, and that

It is further adjudged that title to the premises described in the aforesaid Certificate of Taking, as owned by the plaintiff, revert and pass to and vest in the plaintiff.

/s/ Fitzgerald
Judge

STATE OF CONNECTICUT)
) *ss.*
Hartford County,)

[SEAL] I, Thomas H. Abraham, Clerk of the Supreme Court of said State within and for said County.

HEREBY CERTIFY the foregoing to be a true copy of record, of the Judgment in No. 156899, Augustus J. Simmons vs Frank C. Parizek, et al.

IN TESTIMONY WHEREFOR, I have hereunto set my hand and the seal of said Supreme Court, at Hartford, in said County, this 7th day of September, 1971

/s/ Thomas H. Abraham, Clerk.

[ILLEGIBLE]

Received March 24, 1972 at 2:35 P. M. By /s/ Miriam W. Vieta, Town Clerk.

Vol. 52 – Page 243

KNOW ALL MEN BY THESE PRESENTS: That the Society for Savings, a Corporation chartered by the State of Connecticut, and doing business in the Town and City of Hartford, County of Hartford, in said State, does hereby release and discharge a certain mortgage from ROGER J. GAGNON and DIANNE E. GAGNON _____

to the said SOCIETY FOR SAVINGS, dated July 23, 1962 and recorded in the Land Records of the Town of East Granby in the County of Hartford, and State of Connecticut, in volume 36 at page 275 at which reference may be had:

IN WITNESS WHEREOF, the Society for Savings, by CLARENCE W. HAMSTEDT its Assistant Vice-President, duly authorized, has hereunto set its hand and seal this 22nd day of March 1972.

SOCIETY FOR SAVINGS,

By /s/ Clarence W. Hamstedt L.S.
CLARENCE W. HAMSTEDT
Assistant Vice-President

Signed, sealed and delivered in presence of

/s/ Renee B. Hills
Renee B. Hills

/s/ William A. [Illegible]
William A. [Illegible]

STATE OF CONNECTICUT)
) ss.
COUNTY OF HARTFORD)

Hartford, March 22, A. D. 1972

Personally appeared CLARENCE W. HAMSTEDT, ASSISTANT VICE PRESIDENT, AS AFORESAID, signer and sealer of the foregoing instrument, and acknowledged same to be his free act and deed, and the free act and deed of the Society for Savings before me.

Received March 24, 1972
at 3:20 P. M.

By /s/ Miriam W. Vieta, Town Clerk.

/s/ William A. [Illegible]
William A. [Illegible]
My Commission Expires
Mar. 31, 1974
Notary Public

Exhibit 2

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN,

LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons John Kataja
David Salzman, Esq.
Stephen Silverman, Esq.
Ned Rogin, Esq.
Phillip Robbins, Esq.
F. D. Neusner, Esq.
Dennis Cemeriva, Esq.
Robert L. Hirtle, Esq.

Reported by:

William G. Crampton
Certified Shorthand Reporter
Notary Public

* * *

[8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the highest and utmost respect for Referee Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are

clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before there will be any Goddamned closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NEUSNER: Is that a definite negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a. m. the closing was adjourned).

* * *

Exhibit 3

NO. 202121-8

STATE OF CONNECTICUT	SUPERIOR COURT
VS.	HARTFORD COUNTY
AUGUSTUS J. SIMMONS	APRIL 19, 1978

NO. 199230-9

AUGUSTUS J. SIMMONS

VS.

SAMUEL KANELL, ET AL

NO. 140965

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS AUGUSTUS J. SIMMONS and CHARLES SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 163875

AUGUSTUS J. SIMMONS

VS.

HORACE B.
WETHERELL, ET AL

MOTION TO WITHDRAW AS COUNSEL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert L. Hirtle
ROGIN, NASSAU, CAPLAN, LASSMAN AND HIRTLE

/s/ David B. Salzman
DAVID B. SALZMAN, ESQUIRE

/s/ Stephen Silverman
STEPHEN SILVERMAN, ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle, Jr.
Robert L. Hirtle, Jr.

Exhibit 4

[LOGO] Cleaveland Legal Blank Service, Inc.
Hartford, Connecticut

EXPARTE

DAVID B. SALZMAN, ET AL	:	SUPERIOR COURT
	:	HARTFORD COUNTY
VS.	:	APRIL 20, 1978
AUGUSTUS J. SIMMONS	:	

ORDER GRANTING PRE-JUDGMENT REMEDY
(WITHOUT HEARING)

The Application and Affidavit of Plaintiff(s) for Prejudgment Remedy pursuant to C.G.S. Section 52-278a et seq. as amended, having been presented to the Court and there being probable cause to sustain the validity of the Claim of the Plaintiff(s), it is hereby ORDERED that the Plaintiff(s) may

(a) attach to the sum of **$105,000.00** the real estate standing in the name of the Defendant(s) **Augustus J. Simmons**

~~**located at**~~ **as described in Schedule A attached hereto.**

(b) garnishee as the agent, trustee and debtor of the Defendant(s) and ha ___ concealed in ___ hands, the goods, effects and estate of the Defendant(s) and ___ indebted to the Defendant(s).

(c) cause to be replevied to the Plaintiff(s) the certain goods and chattels described in Exhibit ___ attached hereto and made a part thereof.

Dated at **Hartford, CT** this **20th** day of **April 1978**

/s/ [Illegible]
Judge

[logo] Cleaveland Legal Blank Service, Inc.
Hartford, Connecticut

EX PARTE
P.J.R. NO.

APPLICATION FOR PRE-JUDGMENT REMEDY TO THE SUPERIOR COURT TO BE HELD IN **HARTFORD**, IN AND FOR THE COUNTY OF

The undersigned represents:

1. that **DAVID B. SALZMAN, STEPHEN SILVERMAN and ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE** of **580 Park Avenue, Windsor, CT** pursuant to the attached proposed unsigned Writ, Summons, Complaint and Affidavit.

2. that there is probable cause that a judgment will be rendered in such matter in favor of the applicant and to secure such judgment the applicant seeks an order from this court directing that the following prejudgment remedy be issued to secure the sum of **$105,000.00**

a. To attach the following described real property of the Defendant(s) to Wit:

See attached description (Schedule A)

b. To garnishee ___ , as he is the agent, trustee, debtor of said Defendant and has concealed in his hands the goods, effects and estate of said Defendant and is indebted to him.

c. To replevy property described in Exhibit

d. To enjoin the said ___ his/her/their agents, servants or employees from selling, transferring or encumbering any interest in and to the above-described real property pending further order of this court.

PLAINTIFFS
/s/ By Jason E. Pearl
Jason E., Pearl Attorney

AFFIDAVIT IN SUPPORT OF P.J.R. APPLICATION

I, the undersigned, do make affidavit and say that there is probable cause to sustain the validity of the Plaintiff's claim and

1. that the prejudgment remedy requested is for an attachment of real property; or

2. that there is reasonable likelihood that the defendant:

[ ] a. Neither resides in nor maintains an office or place of business in this state and is not otherwise subject to jurisdiction over his person by the Court;

[ ] b. Has hidden or will hide himself so that process cannot be served on him;

[ ] c. Is about to remove himself or his property from this state;

[ ] d. Is about to fraudulently dispose of or has fraudulently disposed of any of his property with intent to hinder, delay or defraud his creditors;

[ ] e. Has fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of his debts;

[ ] f. Has stated he is insolvent or has stated he is unable to pay his debts as they mature.

I base this upon the following Statement of Facts:

Affiant is an attorney at law who rendered legal services together with the other plaintiffs for the defendant totaling $104,505.00. Defendant has not paid the same, despite demand.

/s/ David Salzman
Plaintiff-Competent Affiant

Subscribed and sworn to before me this 4/20 day of ___ 1978

/s/ Robert Hirtle
Commissioner of the Superior Court – Notary Public

Exhibit 5

Law Offices
Jason E. Peral

19 SOUTH HIGH STREET
POST OFFICE BOX 183

New Britain, Connecticut 06050

Jason E. Pearl
Kenneth J. Spoyer

Telephone
(203) 229-1603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
Vs: Augustus Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of having to "reargue" your

prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl, Esq.
Jason E. Pearl, Esq.

JEP/ck
1888

Hearing set up
for 9/12/79 at 2:00 p.m.

Exhibit 5

Linda,

Based on SHELTON V WOLTHAUSER, 80C 599 (furnished by Lucian) I would leave no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks

Exhibit 6

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAWER N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion For Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled by

the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:med
cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

Enc.: Copy of Mot. or Disbursement of Funds by Clerk

Exhibit 7

December 1, 1996

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject of this letter pertains to: *DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.*

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumberances be endorsed on the record of such attachment with the words *"DISCHARGED BY OPERATION OF LAW"* pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall,*

CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. that there was *NO* officer's service on any parties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and *NO* compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumberance at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95; Vol. 58, p. 221; 59/253; 59/263, 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served any citation nor has my clients even been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall*, #163875, a tort action *AGAINST* the state, a result of Special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGRIFIED into an eminent domain action by superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumberance.

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out before that time, the lien perishes. *Sanford v. Pond*, (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Daly in *August, 1979* there were *NO* proceedings before the Superior Court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen*, 80 c 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is years, not months or days beyond the statutory fifteen (15) years referenced

and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

---

§ 52-327. Duration and release of attachment liens on real estate

No attachment of real estate shall continue in force as a lien for a longer period than fifteen years after the date thereof unless within said period the action in which such attachment was made has been prosecuted to effect and a judgment lien filed according to law. All attachments of real estate which have expired as a lien by the provisions of this section shall be deemed dissolved and the real estate shall be free from any lien or encumbrance by reason of the same and the town clerk of the town in which such real estate is situated shall, upon the request of any person interested, endorse on the record of such attachment the words "discharged by operation of law." (1949 Rev., § 8026.)

Plaintiff-owner-interested person hereby certifies that a copy of this Request of Dissolution Pursuant to C.G.S. § 52-327 will be – hand delivered to:

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

(to be put in *Simmons v Wetherall*, #163875 file)

Will be mailed, postage prepaid, first class to:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Atty. Tom Byrne
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

December 1, 1996

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

Dear Michael,

The attached "Dissolution of Attachments Pursuant to C.G.S. § 52-327" filed under the caption of *Simmons v. Wetherall*, #163875 is being submitted to be made part of the #163875 "damages" file.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

LAW OFFICES
BYRNE & BYRNE
2-E FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

THOMAS P. BYRNE
STEVEN E. BYRNE

TELEPHONE
(203) 677-7355

25 November 1996

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Ozzie,

The only activity of which I am aware with respect to a mortgage dated July 3, 1974 as recorded in Volume 55

Page 731 of the East Granby Land Records is notice of a hearing to be held before Arnold Aronson, Judge of the Superior Court, on December 23, 1991 to determine the disposition of funds.

Enclosed herewith is a copy of the notice which I received from the court as well as a copy of a letter to me dated December 19, 1991 from Attorney Walter E. Bass, Jr. I did not attend the hearing of December 23, 1991.

No payments have been received by me on this mortgage.

Very truly yours,

/s/ Thomas P. Byrne
Thomas P. Byrne

AUGUSTUS J SIMMONS VS.
WETHERALL, DEP COMR CV-70-0163875-S

ALL COUNSEL AND PRO SE PARTIES ARE ORDERED TO APPEAR BEFORE THE HONORABLE ARNOLD ARONSON ON MONDAY, DECEMBER 23, 1991 AT 9 30 A.M. IN ROOM 111 AT HARTFORD SUPERIOR COURT, 95 WASHINGTON ST., HARTFORD, CT. A MOTION BY THE COURT TO DETERMINE THE DISPOSITION OF FUNDS WILL BE HEARD.

A COPY OF SAID MOTION WILL BE SENT TO ALL COUNSEL AND PRO SE PARTIES UNDER SEPARATE COVER.

KAREN PICKER
ASSISTANT CLERK

SUPERIOR COURT
95 WASHINGTON
STREET
P.O. DRAWER D,
STATION A
HARTFORD,
CONNECTICUT 06106

WALTER E BASS JR
P. O. BOX 289
EAST WINDSOR CT
06088

DATED DEC 05, 1991

Law Office of
Walter E. Bass, Jr.
P.O. Box 289
Warehouse Point, Conn. 06088

Tel. 623-8688 *Juris Number 02450*

December 19, 1991

Attorney Thomas Byrnes
790 Farmington Avenue
Farmington, CT 06032

RE: Augustus J. Simmons
vs.
Horace Wetherell, et al

Dear Attorney Byrnes:

Please be informed that my office represents several creditors of Mr. Augustus J. Simmons. Please by informed that Judge Arnold Aronson is holding a hearing on December 23, 1991 at 9:30 a.m. in Courtroom 111 at Hartford Superior Court. Enclosed please find a copy of a Notice which my office has received concerning this hearing. I would like to inform you, that I do believe that you

have an interest in this case. I request that you be present at this hearing.

If you have any questions, please feel free to contact my office.

Respectfully,

/s/ Walter E. Bass, Jr.
Walter E. Bass, Jr.

WEBjr./mf

RECEIVED DECEMBER 2, 1996 AT 8:30 A.M.
BY /s/ Laurie B. LaFind
ASS'T. TOWN CLERK

Received 12/2, 1996

at 8:30 A.M.

Recorded in EAST GRANBY LAND RECORDS

Volume 112 Page 001

By /s/ Laura B. LaFind
Asst. Town Clerk

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Exhibit F

No. CR97-0104930
No. CR97-0105048

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS

Attn.: Chief Clerk,

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD/ NEW BRITAIN AT ENFIELD

MAY 12, 1997

MOTION TO DISMISS FOR LACK OF JURISDICTION

The defendant moves that the court dismiss this action because:

SPECIAL ACT #170 (1969)

The defendant, Augustus J. Simmons, in the above criminal actions was the plaintiff in the *Simmons v Wetherall,* #163875 tort action, transmogrified by private parties into a "confiscatory" eminent domain action without any notice to any parties, without any return of service to the courts of competent jurisdiction (Superior Court), without "adequate provision for obtaining just compensation" that must be *made* pursuant to statute, and, *secured* in an action to the court, are "jurisdictional facts" upon which the LACK OF JURISDICTION was put squarely before the Superior Court on June 7, 1982 by the Atty. General's office (Feingold, V.) before Hon. Dupont, A., Judge.

Sworn testimonial regard jurisdiction of the subject matter, Victor Feingold, Esq. Asst. Atty. Gen., transcript June 7, 1982 at page 17 reads: – "I now direct Your Honor, and invite Your Honor's attention to another element of jurisdiction in the entire matter of *Simmons v Wetherall.* I

might say that whenever I call Your Honor's attention to the question of jurisdiction, in accordance with the law of the state, if lack of jurisdiction is brought to Your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, Your Honor cannot proceed on any of the proceedings until you resolve the issue of subject matter jurisdiction. If, per chance, the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this court, the question of jurisdiction is called to Your Honor's attention."

Neither in form or substance does this special act, printed among the special acts, resemble the ordinary grant of the exercise of the power of eminent domain – for jurisdiction purposes. (see *State v McCook*, 109 Conn. 621).

The purpose of carrying into effect the provisions of the special act was to determine the amount of damages to be paid the owners of real property that was the subject of condemnation in 1964 and 1968 that were ruled "null and void" by the Supreme Court in 1971 (160 Conn. 492) without just compensation having been first made and secured making a travesty of the constitutional provisions protecting rights of property.

The validity of this act as an exercise of the power of eminent domain lacks the principles which are applicable to all statutes which provide for the taking of land by eminent domain. Neither the attorneys nor the referee

acted within their authority, for no valid taking by eminent domain was given by this act. It's claimed grant of authority to acquire by seizure proceedings, land that was never described in the act was wholly inoperative.

As stated in *State v McCook*, Supra, at 634, the court is without judicial power to conclude that an act of seizure (not condemnation) can be legally operative which ignores the time honored judicial procedure for taking property by eminent domain and provides no means for determining just compensation for the property seized.

PARTIES

Where it is exceedingly clear *All* interested parties are not before the court, and, *CANNOT* be brought before the court, and, the court acquires jurisdiction only when return of service is made to the court, a landowner is entitled to bring successive damage actions for a continuing *TRESPASS* for each successive period involved. The trespasser, having no right to remain on the land, is required to cease his trespass and until he does so is liable for damages on a continuing basis.

JURISDICTION

Plaintiff's/defendant's memorandum of law on jurisdiction, dated November 28, 1995 pertains to the subject property for both civil and criminal courts. Copies of the memorandum (minus exhibits) to the Clerk of the Court and State Attorney's office is attached and made part of the Motion to Dismiss for Lack of Jurisdiction. CONDEMNATION, exercised twice, and, bungled twice is still

available as an appropriate legal proceeding to acquire the "satisfactory property interests" mandated by Grant Agreement 9-06-009-5708 (1955) with the United States of America by which the jurisdiction question could not be raised by the landowner's – if exercised properly.

DISSOLUTION OF ATTACHMENTS

Plaintiff/defendant submits for the record, as further evidence that this court lacks jurisdiction, a copy of dissolution of attachments, pursuant to C.G.S. § 52-327 at Vol. 112, p. 001 to 008 on the land records of the town of East Granby, CT, received December 2, 1996 at 8:30 a.m.

Wherefore he prays judgment dismissing this action.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
446 Main St.
E. Hartford, CT 06118
(860) 569-6714

cc: Exhibits

ccc: Copies of motion and exhibits
to State Attorney's office –
hand delivered 5/12/1997

/s/ Augustus J. Simmons
Augustus J. Simmons

Exhibit G

No. CR97-0104930
No. CR97-0105048

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS

Attn.: Chief Clerk,

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD/ NEW BRITAIN AT ENFIELD

JULY 8, 1997

SUPPLEMENTAL MOTION TO DISMISS FOR LACK OF JURISDICTION

The defendant moves that the court dismiss this action because:

1. Regardless of the phraseology in the nature of a conclusion employed by the pleader, if the face of the record indicates that the court is without jurisdiction, the complaint must be dismissed. *Horak v State*, 171 Conn. 257 at 260, 368 A2d 155 (1976).

2. In *Kinney v State*, 213 Conn. 54, 58, 566 A2d 426 (1989), the Supreme Court most recently stated as follows:

"Once an issue of subject matter jurisdiction is raised, the court must dispose of this legal question as a threshold matter," (citing cases). "Whenever a court discovers that it has no jurisdiction, it is bound to dismiss the case . . . " (citing cases.)

"Whenever the absence of jurisdiction of the court is brought to its attention, the matter must be decided before any further action is taken," *East Side Civic Assn. v Planning and Zoning Commission*, 161 Conn. 558, 559, 290

A2d 348 (1971), or, as the Supreme Court stated in *Baldwin Piano & Organ Co. v Blake*, 186 Conn. 295, 297-298, 441 A2d 183 (1982).

Whenever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it 'can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction' (citing cases).

3. Where *subject matter jurisdiction* and *jurisdiction of the parties*, AND THE LACK THEREOF, was actually adjudicated before the Superior Court, Hon. Dupont, A. on June 7, 1982, by – the *ATTORNEY GENERAL'S OFFICE*, – (Feingold, Victor, A.A.G.), pages 12 thru 25 inc. of transcript are submitted to supplement the two (2) exhibits attached to motion on jurisdiction, dated May 12, 1997.

4. The Supreme Court of Connecticut had jurisdiction in order to determine whether the trial court, or, in case at bar, private counsel had jurisdiction, however, in attempting to "construe the legal effect of the undertaking in question involving LEGAL TITLE and trespassory consequences," the Supreme Court cannot go outside of the record before the court and consider a ground not existing at the time the motion to set aside the 'ex-parte' judgment was made to the court." *Dunnebacke v Detroit G.H. & M. RY. Co.*, 248 Mich., 450, 456, 227 N.W. 811. Where there is not, has not been any pleadings, judgment file, written statement of compensation, summons of service, assessment of damages against Docket #163875 record before the court of competent jurisdiction (Superior Court), the existence of a substantial question of

constitutionality continues to accrue to the detriment of the owner where the Supreme Court has adjudged a legislative enactment (Special Act #170 – 1969) in a way not complying with the requirements of the due process clauses of the state and federal constitutions.

An appeal to the Supreme Court may be taken only from a final judgment. General statutes § 52-263; practice book § 600; *Tough v Ives*, 159 Conn. 605, 606, 268 A2d 371; *Howarth v Northcutt*, 152 Conn. 460, 462, 208 A2d 540. The absence of a final judgment goes to the *jurisdiction of the court*. Any appeal which is not from a final judgment must be rejected even though that issue has not been raised by the parties. *Hoberman v Lake of Isles*, 138 Conn. 573, 574, 87 A2d 137.

The test whether a judgment is "final" in the sense that an appeal may be taken from it, lies not in its nature, for the case may still remain in the trial court for further proceedings, but in its effect as concluding the rights of some or all of the parties. *Banca Commerciale Italiana Trust Co. v Westchester Artistic Works Inc.*, 108 Conn. 304, 307, 142 A. 838.

5. Where federal funds are involved, as in case at bar, the courts have ruled that as a – condition precedent to jurisdiction – , the public entity may acquire real property only if it first makes offer to property owner and provides him with written statement explaining why offer is just, establishes "mandatory" requirements which must be observed by any public entity planning to initiate eminent domain proceedings through resolution of necessity. See *City of San Jose v Great Oaks Water Co.*, 237 Cal.

Rptr. 845 (Cal. App. I Dist. 1987). Also, 49 C.F.R. 24, 102(d).

6. Where federal law and public policy of State of Connecticut mandate appraisals as a – condition precedent to jurisdiction – the public entity may acquire real property only after an appraiser has been appointed who shall provide to owner of land an opportunity to accompany appraiser. Courts have held: that a county would be enjoined from further prosecution of lawsuits for condemnation of real property until county had complied with federal statutes requiring the acquiring agent to appoint an appraiser. *Bethune v United States*, 376 F. Supp. 1074 (1972). Also, 49 C.F.R. § 24.102.

7. Jurisdiction over the person(s) is a separate essential element of the jurisdiction of the court. Facts showing the service of process in time, form and manner sufficient to satisfy the requirements of mandatory statutes in that regard are essential to jurisdiction over the person. Such fundamental existence under "jurisdictional facts" must be shown for the power of the court to entertain and prosecute a proceeding on the merits. See *Castro v. Viera*, 207 Conn. 420 (1988) at Page 433.

Wherefore he prays judgment dismissing the action.

Respectfully submitted,

/s/ Augustus J. Simmons 7/8/97
Augustus J. Simmons
446 Main St.
E. Hartford, Ct 06118
(860) 569-6714

cc: Exhibits

ccc: Copies of motion and exhibits
to State Attorney's office –
also
Arnold Shimelman, A.A.G.
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131-7546

/s/ Augustus J. Simmons 7/8/97
Augustus J. Simmons

EXHIBIT H

Ex. # *Did the trial court, and the Court of Appeals mislead the jury by refusing to allow any evidence or testimony that Mr. Simmons WAS – and still is – the owner of Parcel "A"*

P. 206 *Mr. Robert Juliano, Airport Administrator*

Naab: Q. P. 206: And Mr. Simmons has sent you some correspondence in connection with those disputes, correct?

Ans: That is correct.

Naab: Quite a, quite a bit of correspondence as I understand it.

Ans: Yes.

* * *

P. 211, 212

Naab: History of fence – if the state acquired the land of Mr. Simmons by the state.

Court: But I have already told you we are not having a trial about the state acquiring the land. That's already a matter of record.

Naab: But you told me that I can prove that the land is Mr. Simmons' or attempt to prove that. That's in the long run, what I am going to try to do.

Court: Uh-uh no. I didn't mean to say that. The land is not Mr. Simmons'. The land does not belong to Mr. Simmons.

Naab: Your Honor, I protest most vigorously to you saying the land is not Mr. Simmons'.

THE ISSUE IN THIS CASE IS WHETHER IT IS THE STATE'S OR MR. SIMMONS'.

Court: No that's not the issue in this case. That's the problem. That is not the issue in this case.

Naab: Is the court taking judicial notice the land belongs to the state?

Court: At some point I am sure I will. It is a matter of record, the property does not belong to Mr. Simmons.

Naab: Your Honor, the state itself through the Atty. General's office has admitted in court the state did not acquire the property.

If Mr. Simmons – that's an issue and I submit that if Your Honor precludes me from even raising that issue that a grave injustice will be done here.

Court: That may be marked as a full exhibit. Defendant's E in evidence.

Naab: Your Honor, may I have a standing objection to this procedure.

Court: Yes.

Court: I am changing my ruling. The objection was sustained. There is no foundation for that map.

* * *

P. 229

Naab: Your Honor, I submit that whether the state acquired the property from Mr. Simmons or not certainly

is an issue. He certainly cannot be guilty of criminal trespass on his own land. So whether or not he is the owner of that property is an issue in this case.

Court: This jury is not going to be called upon to decide the issue of the propriety or impropriety of the acquisition of that property. That document to do with what this jury has to decide.

Naab: I submit, Your Honor, that it does, and at least – at least, perhaps the court would permit me to, since the jury is out, to refer to those matters within the document which I think are particularly relevant.

Court: You asked the court to take judicial notice of –

Mr. Malone: We did some time ago. I did during argument during Mr. Simmons' motion to – whatever it was – for me to PACK MY BAGS, I think. I gave the court the citations and I will ask the court at the proper time – we haven't even got to the point where it is necessary for you to take judicial notice of anything at this point. But I will ask the court, once again, to take judicial notice of cases I cited to the court on an earlier occasion. MOTION TO PACK THE BAGS – Ex. #E

* * *

P. 233

Naab: Mr. Juliano, have you received from time to time letters from Mr. Simmons with respect to the fence between his land and the National Guard area in East Granby?

Ans: Yes.

Naab: I am going to show you three letters, or copies of three letters and ask you if those copies of letters which you received from Mr. Simmons and which are in the file of Dept. of Transportation.

Ans: Yes.

Naab: And did you have an opportunity this morning to compare these copies to the originals in your file?

Ans: I did.

Naab: And are they accurate copies of the originals in your files?

Ans: Yes.

Naab: Your Honor, I offer these letters.

* * *

P. 236

Court: Disallowed.

* * *

P. 246

Naab: Mr. Juliano, did Mr. Simmons notify you that he intended to cut down the fence before he did it?

Ans: Yes.

Naab: And did he notify you of that in writing?

Ans: Yes.

Naab: So you knew that was his intention?

Ans: Yes.

Naab: And did he, as part of that notification, did he tell you the reason was because the property was his, and the state was encroaching?

Malone: Objection.

Court: Sustained. Leading question. Ask him what the reason was. Leading question.

Naab: What reason did Mr. Simmons give you for saying that he was going to cut down the fence?

Ans: That the fence was on his property.

Naab: In the whole time you have known Mr. Simmons or known of Mr. Simmons, has he ever – has he consistently maintained it was his property?

Ans: Yes.

* * *

MISLEADING THE JURY PERTAINING TO LAND RECORDS UPON DISSOLUTION OF ATTACHMENTS

P. 343

Naab: Just for identification purposes, I will represent to the court this is a certified copy of documents from the East Granby Land Records, vol. 112 pages 001 thru 008.

Malone: Objection.

Court: Objection sustained. The document is not going to be made an exhibit.

* * *

MISLEADING THE JURY REGARDING DAMAGES

p. 353

Naab: Showing you Ex. "W" for identification Mr. Simmons which appears to be a letter from Referee Shapiro's secretary to Atty's Salzman and Feingold dated April 5, 1977 in *Simmons v. Wetherall*, No. 163875.

Ans: This letter dated April 5 sets dates for hearings on damages in December of 1977 and January 1978.

Naab: And were any such hearings held?

Ans: No such hearings were ever held on any of the dates.

Court: Objection sustained.

Naab: Offer Ex. "Y" which appears to be handwritten letter from you to Rogin dated 4/12/78. Is this another discharge letter?

Ans: Yes it is.

Malone: Objection.

Court: Sustained.

Naab: Offer Ex. "Z" certified copy of papers in Superior Court file of *Simmons v. Wetherall* of two page citation, submitted by Atty. Gen. McQueeney listing encumberances.

Court: Objection sustained.

Naab: Offer letter from Referee Shapiro to Jason Pearl dated 7/18/80 which was after Supreme Court decision of May 1980.

Court: Objection sustained.

* * *

P. 358

Naab: Your Honor, I am going to offer the next quite a few exhibits in Groups CC to GG inc. CC is a lis pendens from Leonidas Simmons, DD an attachment by Valente, EE is a judgment by Roisman, FF is a mortgage by Mikulske, and GG is a judgment lien by JBS Inc.

Mr. Simmons, do you recognize these documents?

Ans: They are all liens on the public land records, Town Clerk, Town Hall, Town of East Granby all on the land records.

Naab: Were these liens on the property on February 1, 1991 when National Guard entered on property with fence erecting?

Ans: Yes, these liens were all on the property.

Court: Objection sustained.

* * *

P. 362

Naab: Offer Group (10), HH thru RR, certified copies from the East Granby Land Records of judgment in favor of Allaire, Massow, C.N.B., Ed Kernan, John Kataja, Margaret Dean, Ronald Cassidento, 2nd mtg. to John Kataja, Destito, Bensinger, tax lien to Town of East Granby for list of 1987, tax lien grand list 1988.

Naab: Mr. Simmons, were these liens all on Parcel "A" at the time the fence was put up?

Ans: Yes.

Naab: And when I say the fence, I mean the fence that you took down in 1997.

Ans: That is correct.

Malone: Objection.

Court: Sustained.

* * *

P. 364

Naab: The next packet consists of three exhibits which are certified copies of encumberances on the land records of Town of East Granby, mortgage "TT" is a mortgage to Rosenblitt; "UU" is a judgment lien to Formisano; "VV" is a mortgage to Stackpole.

Naab: Are these liens on the property of Parcel "A"?

Ans: Yes.

Naab: Were these put on before or after the fence went up?

Ans: These I believe, were after the fence went up.

Malone: Objection.

Court: Sustained.

Naab: Showing you what's been marked Ex. "YY". What does that appear to be?

Ans: This is C.G.S. 48-21.

Naab: What is the significance?

Ans: Pretty much in essence says each and every individual lien-holder must be paid first, BEFORE the owner, in any real property encumberance situation.

Naab: Have you been paid for any of this land the state has taken?

Ans: Well, I think it is almost a self-answering question which, NO, I have not been paid.

Naab: Are there lien-holders that haven't been paid?

Ans: There are several.

Naab: I will be submitting a written request to charge as such, Your Honor.

Court: Okay. Well it is a general statute. The court can certainly take judicial notice of it. It WILL NOT be submitted to the jury. It will not be marked as a full exhibit.

* * *

P. 367

Naab: Mr. Simmons, I am showing you exhibits "ZZ" (48-12) and "AAA" (8-129); what is the significance of these?

Ans: TO ACQUIRE PROPERTY. As I said, whether it is by purchase, lease, exchange, gift, or eminent domain this is the procedure you have got to follow.

Naab: Has this procedure been followed in the case of Parcel "A" or any of your other land in East Granby?

Ans: Absolutely not.

Malone: Objection.

Court: Sustained.

Naab: Mr. Simmons, showing you what has been marked previously as def. exhibits "BBB" (48-17 a, b, c); "CCC" a copy of Uniform Real Property Acquisition Policy and "DDD" (C.G.S. 13b-50).

Naab: Have the procedures specified in these statutes, federal and state statutes been followed in acquiring your land, including Parcel "A."

Ans: They never acquired it.

Court: OBJECTION SUSTAINED.

These documents are not relevant. This is a civil – this has to be done in a civil court, not relevant to these proceedings. They will not be marked as exhibits. They are not to be read to the jury and will not be referred to in any arguments to the jury.

(2)

Supreme Court, U.S.
FILED

No. 00 924 OCT 10 2000

OFFICE OF THE CLERK

In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State of Connecticut

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

30 pp

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-104930
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: Sept. 2, 1998
(DATE)

Augustus Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 1st.degree	53a-115
SECOND	Criminal Trespass 3rd.	53a-109
THIRD	Tampering with Airport Property	15-69
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT:
/s/ Lucy A. Spakauskas
Deputy Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. 1, 2, and 3.

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: _____ on: _____ at: _____, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

- GUILTY, on Count(s) No.: 1, 2, 3 DATE: 6/5/98 TIME: 11:55 A.M.

  It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

  Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/1998.

  NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: _____

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) thereafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. 1 for 3 yrs. e/s/a 6 mos, 5 yrs. prob.

for a term of _____

at Hartford Correctional Center

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. _____ after _____ day(s) /month(s) /year(s) are served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of _____ mths/yrs. on Count(s) No. _____

Count #2. 3 mos concurrent 5 yrs prob.

Count #3. 5 yrs. e/s/a 1 yr. 5 yrs. prob. consecutive

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-105048
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: Sept. 11, 1998
(DATE)

Augustus Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Ill Tamp Airport/ Equipment	15-69
SECOND	Criminal Trespass 1st	53a-107
THIRD	Interfere with Offcr/ Resisting	53a-167a
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT:
/s/ L. Moncevicius, Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. all counts

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: _____ on: _____ at: _____, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the

Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: all counts DATE: 6/5/98 TIME: 11:55 A.M.

It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/1998.

NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: _____

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) therafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. all counts, see below for a term of _____

at _____

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. _____ after _____ day(s) /month(s) /year(s) are served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of _____ mths/yrs. on Count(s) No. _____

* SENTENCED ON COUNT #1 TO 5 YRS.E/S/A 18 MOS., 5 YRS PROBATION

  SENTENCED ON COUNT # 2 TO 1 YR.E/S 3 YRS PROBATION, CONC

  SENTENCED ON COUNT # 3 TO 1 YR E/S 3 YRS PROBATION, CONC.

FOR A TES OF 8 YRS E/S/A 18 MOS. TO SERVE. 5 YRS. PROBATION

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-106221
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: September 11, 1998
(DATE)

Augustus J. Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 8/8/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 2nd.	53a-116
SECOND	Ill Tamper Airport/ Equipment	15-69
THIRD		
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Ward, a Judge of the Superior Court, on 8/8/97.

ATTEST:
CLERK OF COURT:
/s/ L. Moncevicius, Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 8/8/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. one and two

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. one and two, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: Cr. Mischief and Tamper with Airport/Equip. on: 3/10/98 at: Enfield, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: * 1 and 2 DATE: 6/5/98 TIME: 11:55 A.M.

It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/98.

NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: one

* Criminal Mischief in the 3rd degree

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) therafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. * 1 and 2 for a term of one ct. #1 to ´ yr.e/s/, 3 yrs prob. conc. on ct.2 to 8 yrs. e/s/a 18 mos. 5 yrs. prob. at H.C.C/Walker

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. two after 18 mos. day(s) /month(s) /year(s) and served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of 5 yrs. mths/yrs. on Count(s) No. two and three yrs. on count 1

CR97-106221	:	SUPERIOR COURT
CR97-104930	:	JUDICIAL DISTRICT OF
CR97-105048	:	HARTFORD
STATE OF	:	AT ENFIELD
CONNECTICUT	:	MAY 13, 1998
VS.	:	
AUGUSTUS J. SIMMONS	:	

BEFORE: THE HONORABLE PATRICIA HARLESTON, JUDGE

APPEARANCES:

JOHN MALONE, ESQ.
Enfield Superior Court
State's Attorney Office
101 Phoenix Avenue
Enfield, CT, 06082
ATTORNEY FOR THE STATE

AUGUSTUS J. SIMMONS
PRO SE

SHARON NOLL
Certified Shorthand Reporter

* * *

[38](A recess was taken)

THE COURT: The case contesting the taking of the subject property began in 1960 with numerous suits on various points through the years. The dispute eventually reached the Connecticut Supreme Court in 1980, where Mr. Simmons was ruled against. A stipulated judgment had been filed with the court in 1978 settling the case.

The defendant here, Mr. Simmons, moved to have that judgment reopened, and the Supreme Court denied the appeal in 1980.

Mr. Simmons then filed two suits in the U.S. District Court, both of which were dismissed. Both of those dismissals were affirmed in the Second Circuit Court of appeals, and finally, a Petition for Certiorari was denied by the U.S. Supreme Court on [39] October 1, 1981.

Mr. Simmons, then, in February, on February 3, 1984, filed in the trial court a claim for declaratory judgment. Mr. Simmons also sought to void the 1978 judgment settling the case, which was upheld by the Supreme Court in 1980. Your claim was denied by the court, and you appealed that decision to the appellate court.

On May 7, 1985, the appellate court upheld the decision of the trial court on the ground that the record was devoid of any notice to the myriad of interested persons cited in the claim for declaratory judgment. The trial court, therefore, lacked jurisdiction to hear that claim. Therefore, the judgment entered in 1978 and upheld by the Supreme Court in 1980, which settles the issue of ownership of the subject property – that it is the property of Bradley Airport – stands today. You do not own this property. It is the property of Bradley Airport.

Now, all arguments about procedures issued in the taking of the property, compensation, etc. and several others have been litigated in civil court. The issue of ownership has been settled. Those were all civil matters.

Now, the statutes provide that there shall be a superior court for criminal business. That's provided for in

Section 51-180. The statutes provide that a [40] person may be arrested without a warrant by the police for any offense committed in their jurisdiction when the person is taken or apprehended in the act or on the speedy information of others. That is in Section 54-1f. The statutes provide that a judge of the superior court may issue a bench warrant of arrest upon application by a prosecutor if the judge determines that the affidavit accompanying the application shows that there is probable cause to believe that an offense has been committed and that the person complained against committed the offense. Both of these things happened in this case. This is what gives this Court jurisdiction.

Subject matter jurisdiction is the power of a court to hear and adjudicate a legal controversy between the parties that is of the general class of cases to which the proceeding in question belongs. In this case, criminal cases is the general class of cases to which this proceeding belongs.

In personam jurisdiction consists of the power of the court over the person of a party or litigant to adjudicate his legal rights and obligations in the cause pending before the court.

The State has alleged that you committed certain acts on and against the property of another in violation of several criminal statutes. There is nothing in the record which deprives this Court of the [41] power to hear and adjudicate those claims. There is, further, nothing in the record which indicates that you are not a proper defendant to this controversy. There have been no irregularities cited in the manner in which you were brought before

this Court. This Court, therefore, has subject matter and in personam jurisdiction.

All three motions are denied.

* * *

CR97-104930 CR97-105048 CR97-106221	:	SUPERIOR COURT JUDICIAL DISTRICT OF HARTFORD
STATE OF CONNECTICUT	:	AT ENFIELD
VS.	:	AUGUST 20, 1998
AUGUSTUS J. SIMMONS	:	

BEFORE: THE HONORABLE PATRICIA L. HARLESTON, JUDGE

APPEARANCES:

JOHN MALONE, ESQ.
State's Attorney Office
111 Phoenix Avenue,
Enfield, CT 06082
ATTORNEY FOR THE STATE

GEOFFREY NAAB, ESQ.
LaBelle, LaBelle, & Naab, P.C.
295 East Center Street
Manchester, CT 06040
ATTORNEY FOR AUGUSTUS J. SIMMONS

SHARON NOLL
Certified Shorthand Reporter

[2] THE COURT: Good morning.

MR. MALONE: Good morning, your Honor.

THE COURT: Okay.

MR. MALONE: We're ready for posttrial convictions – posttrial proceedings and sentencing on

Augustus Simmons, your Honor, on CR97-104930, 105048, and 106221.

THE COURT: Thank you. All right.

Attorney Naab, I have an – I want to make sure I have everything. I was given a Motion for New Trial, sent to me, and Motion for Judgment of Acquittal.

MR. NAAB: Yes, your Honor.

THE COURT: That's the only two?

MR. NAAB: Yes.

THE COURT: So you want to argue those – obviously, you want to argue those first?

MR. NAAB: Well, I think that's appropriate. I think that's appropriate, your Honor. I am not going to have an awful lot to say in addition to what I put on the paper.

THE COURT: Okay.

MR. NAAB: I presume the issues were discussed at great length during the course of the trial in connection with various objections which were made by both sides to various testimony. The motion for New Trial is based upon the fundamental notion that if the plaintiff is – or, excuse me, the plaintiff – if the [3] defendant is entitled to a trial by a jury of his peers, he is entitled to a fair trial. And a fair trial requires that the jury be entitled to hear or see all of the evidence which is relevant to the charges against the defendant; that the Court excluded a great deal of evidence which was relevant to the charges against the defendant.

Most particularly, the kinds of evidence that were excluded were evidence that went to the history of the transactions involving the land where the fence was that Mr. Simmons cut down, which was relevant to his state of mind in connection with the crimes with which he was charged, in particular, the crime of criminal mischief and criminal trespass and also the crime of tampering with airport property.

Mr. Simmons, as the Court knows, firmly believes that the property is his; that the fence was on his property; that the state had no right to put that fence up. The jury was told that that's what Mr. Simmons believes. The jury was not, however, permitted to see or hear all of the testimony that is relevant to that issue. The jury was put in the position of hearing Mr. Simmons say, Yeah, that was my property; they had no right to put the fence up and very little else on that score. And the State, of course, was permitted to and did, and not improperly, argued to the jury that well, you know Mr. Simmons [4] says that that's what he believes and maybe he believes it in some sense but not in any real sense because the Supreme Court has said that the property doesn't belong to him and, therefore, he can't really believe that. That was the essence of the State's argument to the jury, and the jury obviously saw it the State's way, that the Supreme Court has said that this land belongs to the state; that Mr. Simmons has no right in it and how could he possibly believe that the land is his.

I submit, your Honor, that if the jury had been permitted to hear the entire story, to hear the entire story presented in a chronological and a logical way as we wanted to present it to them, the jury at least would have

heard both sides. But the jury did not hear both sides. The jury did not hear both sides because of all the exhibits and the other testimony that were excluded, and they are listed in my motion. And I don't see any point in going into that any further unless your Honor wants me to.

But that an essence of my claim, whether Mr. Simmons actually believed that the property was his, is relevant on the, to the conviction on the crimes from criminal trespass. An element of criminal trespass is that he knew that he had no right to be on the property. In fact, Mr. Simmons knew – what he knew was that he had every right to be on the [5] property. I am not talking about what the law says. I am talking about what Mr. Simmons knew, what he knew in his head. Because that's the element of the crime. And the crimes of criminal mischief, the statute is stated somewhat differently. It says that he damaged the property without a reasonable belief that he was entitled to do so or the reasonable belief that he had the right to damage it.

Whether Mr. Simmons' belief was reasonable or not is certainly a function of what Mr. Simmons knew, what had gone on, what had transpired in the past to form Mr. Simmons' belief. The jury was not permitted to see or hear the evidence germane to that question.

And, of course, so far as tampering with airport property goes, if it wasn't airport property, at least not in Mr. Simmons' mind, he could not have had the requisite mensa rea for commission of that offense. That certainly shows some light on whether or not he was reasonable in blockading the fence repairers and not cooperating with

the police at the time they came to ask him to get his car off the fence line and then when he refused to do that, get out of his car and be arrested.

So I submit, your Honor, that these issues are relevant on all of the charges of which Mr. Simmons stands convicted.

And the Motion for Judgment of Acquittal, the [6] issue is simply this: although there was some vague testimony by Mr. Gobb, who only started his job 11 weeks before the trial and was not even in Connecticut at the time of any of the incidents involved, although there was some vague testimony by Mr. Gobb about the airport security fence and the airport security perimeter, it is clear from the testimony of Major Lilya, who testified twice, that the fence that Mr. Simmons cut was a National Guard fence. It was not an airport fence. It was a National Guard fence. It was a fence that was put up by the National Guard and reerected by the National Guard after these incidents and was a fence that fenced in a National Guard area or an area that was leased to the National Guard by the State Department of Transportation. It was not part of the airport itself. Certainly, the National Guard fence went around the area that was enclosing the airport, but it was not an airport fence.

I submit there was no credible evidence from which the jury could have found that fence which Mr. Simmons cut was airport property. And, therefore, the conviction on the three counts of tampering with airport property were – or tampering with airways, as it is so quaintly put in the information and in some of the other documents, should not be allowed to stand.

Thank you, your Honor.

[7] THE COURT: Thank you. Attorney Malone.

MR. MALONE: Your Honor, thank you. As relates to the Motion for New Trial, the issue that counsel wished the jury to consider was before them. In any event, as to what Mr. Simmons' belief was, he testified. He was permitted by your Honor to go into a lot of detail about what had happened with the property, the transaction in which he signed the deed over. He signed the agreement and stipulation. That ended the civil matter.

And, in fact, we had to call on rebuttal, as you Honor may recall, the attorney on the other side to rebut some of the outrageous allegations concerning the manner the transaction was handled. What your Honor did exclude was simply items that had been litigated before and litigated to conclusion that resulted in the Supreme Court decision that we all know about in *Simmons v. Wetherall*.

And all that Mr. Naab would like the jury to do is retrace that same tired path that has been traced through the courts for many years and had been concluded by the Supreme Court in its decision. That digression would do nothing constructive to the case other than divert the jury from issues before them, which is guilt or not guilt of Mr. Simmons. It would cause considerable side issues, raise considerable side issues that we may have to respond to, would [8] certainly enlarge and elongate the trial even longer than it was, which was long enough.

I feel, your Honor, that your Honor's decision in limiting the evidence was what your Honor is supposed to do, is to limit the evidence so the jury can fairly

consider the evidence relevant to the case. And that's what the – that's what your Honor did. In fact, I suggest your Honor gave him more than could reasonably be expected in terms of what his claims were, such as they were.

So, your Honor, I don't feel as to the Motion for New Trial there are any grounds for a new trial. He had a fair trial. He had more than a fair trial. He was able to advance claims that simply already had been litigated, that in a civil case he could not have brought up because it would have been res judicata, would have estopped him from bringing them up, and he was able to bring them up in court. So I feel he had ample opportunity to testify and give the jury his belief. And they had that before them. They found it as unreasonable as everybody else does except Mr. Simmons.

As to the Motion for Acquittal, your Honor, as your Honor knows you must take the evidence in the light most favorable to the State's position. Mr. Gobb did testify that that fence was part of the security perimeter, and he testified that as part of [9] the security there's a plan for the airport. That specific fence that goes around the property that is owned by the state and leased to the Air National Guard is part and parcel of the security perimeter of the airport, your Honor. And Mr. Naab may find he is not able to agree with it, but in deciding whether or not acquittal should be granted, your Honor, your Honor has to assume that the jury credited that testimony since they look at the testimony in the light most favorable to the State. That being the case, the State had proved that element beyond a reasonable doubt.

In addition, your Honor, the defendant did produce Mr. Juliano. And you may recall that on cross-examination – it was the former airport director – that I reestablished the same evidence through him in cross-examination. So the jury had all that. And, in any event, by the time that they had the verdict, even if they didn't accept Mr. Gobb's testimony, which your Honor must assume nevertheless that they did accept, so I ask your Honor to deny both motions.

Thank you.

THE COURT: All right. Any –

MR. NAAB: No, your Honor.

THE COURT: Okay. On the Motion for New Trial this was a criminal jury that was impaneled to hear [10] the case on charges of tampering with airport property – several charges that had been brought against Mr. Simmons: criminal mischief in the first degree, criminal trespass in the third degree.

And this jury had no authority to overturn the state's Supreme Court decision which had entered judgment upon the stipulation of the parties that the property belonged to the state.

This jury had no authority to go behind that stipulation and enter issues such as whether the defendant was intoxicated or whether he was coerced or whether he had to stand up against the wall or any of the circumstances as to how that stipulation came about. That was not their job, and they had no authority to do any of these things. That's why it didn't matter whether they heard them because they couldn't do anything with that information.

Mr. Simmons is well aware of the procedures to follow to attack the stipulation and the 1980 Supreme Court case because he has done so. They would be through appeals and other court actions. I believe he had brought an action for declaratory judgment, and he has brought these actions. This, however, was not a court action brought by Mr. Simmons to overturn the stipulated judgment or the 1980 Supreme Court case. This was a criminal case that was brought by the State of Connecticut against Mr. Simmons. And the jury had [11] to decide his guilt or his nonguilt.

Now, who owns the property, of course, was an issue in the tampering with airport property charges. However, this issue is not legally unclear. It is disputed, unclear, unresolved only to Mr. Simmons. The fact that he believes the property to still be his was an unreasonable and still is an unreasonable belief. Mr. Simmons' belief has to be reasonable as you have pointed out. The fact that Mr. Simmons has spent years subsequent to 1980 bringing court actions trying to overturn the 1980 decision is indicative of the fact that he understood the effects of that decision but was not in agreement with it and wants it overturned. Refusing to accept the circumstance does not excuse his actions, and the jury would not have been able to find that.

The jury was made well aware by Mr. Simmons' testimony and by other documents and testimony of other people that it was clear that he did not agree with this. He does not agree with it. He believes the property to be his, and they got that. They understood that. He was very clear, very emotional. It was not feigned at all. It is very clear. It was very clear to everyone that he does

not agree with that decision. But it is also clear that it was an unreasonable decision, and if they had found otherwise, I probably would have had to enter a [12] judgment notwithstanding their verdicts. They were not able to find that. They just simply were not able to find that it was not a reasonable decision or a reasonable position that he has. And he is well aware, as I have stated, of the impact and the effect of that 1980 decision.

He is also well aware of what procedures to go through to attempt to have it overturned. He is very intelligent. He's very knowledgeable about court procedures. He's brought numerous actions, and he knows that's where it is done. He also knows that it is not done by – it can't be overturned by cutting down the fence. So the Motion for New Trial is denied.

With respect to the Motion for Judgment of Acquittal, the Court's opinion is that the evidence from the witnesses did support a ruling by the jury that the fence was part of the security perimeter of the airport. I don't think that was an erroneous conclusion for the jury to reach, that that was part of the security perimeter. The National Guard – or was it the National Guard?

MR. MALONE: Air National Guard.

THE COURT: The Air National Guard was leasing the property from the state. I mean, the fence is between both parts. The fact that they maintain it for the airport, which I think was the testimony, does [13] not make it then not be part of the airway or equipment thereof; landing field, airway, or equipment thereof.

There was sufficient evidence to indicate that this fence was a vital part of the airport and played a vital part of the airport. And the absence of that fence – there was testimony that the absence of that fence and cutting down of a portion of that fence could have interrupted substantially the operation of the airport. So the fence must be important to the airport, part of the operation of that, so I think there was sufficient evidence for the jury to find that. So based, on that, the Motion for Judgment of Acquittal is also denied.

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STATE OF CONNECTICUT *v.* AUGUSTUS J. SIMMONS

(AC 18814)

Lavery, C. J., and Landau and Zarella, Js.

Argued May 10 – officially released May 30, 2000

Defendant's appeal from the Superior Court in the judicial district of Hartford, geographical area number thirteen, *Harleston, J.*

Per Curiam. The judgment is affirmed.